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AN INQUIRY

CONCERNING THE

LAWFULNESS OF MARRIAGE

BETWEEN PARTIES PREVIOUSLY RELATED BY

CONSANGUINITY OR AFFINITY.

ALSO,

A SHORT HISTORY OF

OPINIONS IN DIFFERENT AGES AND COUNTRIES,

AND OF THE

ACTION OF ECCLESIASTICAL BODIES

ON THAT SUBJECT.

BY THE

REV. WILLIAM MARSHALL.

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PREFACE.

THE subject of this inquiry is not one of those which, like objects seen through mist, seem large in the distance; but the nearer we approach it, and the clearer the atmosphere, the greater is the apparent magnitude. The more closely we examine it, the more important it appears. If it concerned none but those who are married, and those who desire to be married to the relations of their former wives, it would be less important; though even they, as part of the human family, and some of them brethren and sisters in Christ, deserve our consideration. If, through ignorance, we were in danger of doing injustice to but one of our fellow-creatures in the course of our life, it would be our duty to have that ignorance removed. But when we consider the number who may be called to decide, in Sessions, Presbyteries, Synods, General Assemblies, and other judicatories, in the case of church members whose marriages are objected to, and the number who may be consulted by others, and would desire to give an enlightened opinion, supported by Scripture authority, we find that the subject is of very extensive importance. The whole Christian community, and more especially the ministers and other rulers in the church, are deeply concerned in this matter. The diversity of belief and practice on the subject which prevail among churches and among Christians, not excepting the most

learned and pious students of the Bible, is calculated to expose our rule of faith to the sneer of the Romanist and the infidel. The differences in ecclesiastical procedure relating to this vexed question, as it has been called, is quite a practical evil, and a great inconvenience; for if some churches are known to receive such members as other churches, if they had them, would excommunicate, it is clear that the latter churches cannot, consistently, honour certificates of membership from the former.

The principles of theology and biblical interpretation are involved in this question to a much greater extent than at first view may appear. The distinction between God's moral and his positive laws would probably not have been denied in our times, nor an attempt made to teach us that God might change sin into holiness by his command, had it not been on purpose to clear the way for the desired conclusion on this subject, and to shove aside some arguments which could not well be met if the distinction between moral and positive divine law should remain undisturbed. The important question, whether parity of reason or making criminality by construction is admissible in the application of criminal statutes, which must be applied by erring man, is necessarily called up by this subject. And, if the writer is not mistaken, it will lead, before it is settled in the community, to discussions which shall set in a clearer light the use and abuse of Confessions of Faith in our churches.

Since the General Assembly's decision in the case of Mr. McQueen, so much has been written on the marriage question, and so well, that any-

thing farther may seem unnecessary; yet after reading, with more or less advantage, everything he has heard of that has been published on the subject since that decision, with more that was published formerly, and also reconsidering what he published on it in the year 1835, the writer is convinced, and hopes to make it appear, that the subject, particularly in relation to church discipline, and more especially that of the Presbyterian church, is by no means exhausted. It is the broad question that the churches require to have fully spread out before them; but the case decided by the Assembly in 1842 may serve valuable purposes, as being illustrative of general principles. That is a case, too, in respect of which the Assembly must be either justified or condemned by the Christian public, since it is one in which their discipline descended with awful severity on a Christian minister, hitherto, and even now, respected highly, notwithstanding their sentence.

MARRIAGE LAWS.

CHAPTER I.

The standards of the Presbyterian church assert the right of an offender to demand a trial by the Word of God. That trial independent of other authority.

Marriage arose out of the necessity of man's condition, and was antecedent to all law, except the law of his creation as a social being: yet, as it is the foundation of relations and relative duties very important and extensive, it has necessarily become the subject of legislation in every nation, state, and community. In a few of the most important points, such as marriage of parents to children, the prohibitory laws of civilized nations, whether under the light of revelation or the darkness of paganism, are found generally to agree. In other respect, such as the duties of husband and wife, and various family relations, God himself has given laws which are more conducive to virtue and happiness than any which the wisdom of human legislation could devise. It is not intended to consider in this article all the marriage laws which are necessary in human society, nor even all those which may occasionally call for the action of the church. The following remarks must be confined to those marriages which are considered unlawful on account of consanguinity or affinity between the parties. The vast importance of the subject, and the necessity for having

it better understood, have been noticed in the prefatory remarks. An investigation, in order to ascertain the right and wrong of the matter, is the duty which now claims our careful attention. As the subject lies in the department of morals and religion, the great, and, as some may think, the only question, is, what saith the Scriptures? yet as the articles of faith and duty drawn up by particular churches may be perverted by some to obstruct the free investigation of the word, or at least to prevent the practical application of the discoveries made, it may be necessary to prepare the way by considering the bearing of human standards, especially those of the Presbyterian church, on this subject. That Christians forming one church should have certain principles in common, is always understood, and is indispensably necessary. An authorized publication of these principles, for the purpose of mutual confidence and public manifestation, is certainly convenient and necessary; but an improper use of them may cause their utility to be suspected or denied by many. The objections to what is good usually arise from the abuse of it; and so here, if the standards of the church are used to prevent an accused brother from having a fair trial by the Bible, many will come to believe that Confessions of Faith, like Jewish and Romish traditions, are calculated to make the Word of God of none effect. If we would act up to our standards by giving the accused brother a trial by the Scriptures, notwithstanding his subscription or adherence to these standards, they would serve every purpose for which we can reasonably think they were intended, and would stand exempt from one of the chief

objections which are brought against them.* This leads to a very important inquiry.

What is a trial by the Word of God in the case of a person who has signed his adherence to Presbyterianism and his approval of the Confession of Faith? First; Is it a trial in which, by an article in that Confession which he has transgressed against, he must be held guilty—aye, and until that rule is altered by the votes of two-thirds of the Presbyteries? As that would be immediately the trial of the rule, and only remotely the trial of the person, it cannot be the meaning of the clause in the Confession, which guaranties, not to the rule, but to him, a trial by the Word of God. Farther, this trial is what he may demand, but the consideration of the rule is what he has no power to demand. It can be brought before the Presbyteries, who alone have power to alter it, only by

* The standards of the Reformed Dutch Church contain the following rule, which meets our full approbation: "No accusation or process is admissible before an ecclesiastical judicatory but when offences are alleged which, agreeably to the Word of God, deserve the censures of the church." (The Constitution of the Reformed Dutch Church, Article 69.)

We consider it as consistent with sound Protestantism to affirm that ecclesiastical power, as authorized by the Word of God, is not legislative, but merely judiciary. It is merely a power to make and to enforce those rules or by-laws which are necessary in governing the church according to the laws of the Lord Jesus Christ. Even the Supreme Court of the United States can exercise all the authority to which it is entitled without making any addition to the laws of the land; and surely the church can exercise all her proper authority without making additions to the laws of her divine and infallible legislator. But a rule or law by which people are cast out of the church, unless it is founded on Scripture, is a usurpation—an addition to the law of God.

the majority of the Assembly; and even in the Assembly he cannot bring it under discussion but by a motion made and seconded. He has not individually a constitutional right to bring that matter before the Assembly. He has no power individually to demand a trial of the rule; but when he applies to be tried himself by the Word of God, he needs none to second his demand. It must be complied with, if he is to be tried at all. Even if he has denied the divinity of Christ, the resurrection of the body, and a future state of punishment, all that does not forfeit his claim to a trial by the Scriptures; and he cannot be constitutionally tried and condemned merely on the ground of his denial of articles in the Confession. This does not exempt the guilty from discipline, for the Scriptures, by which he may be tried, are as accessible as the Confession to his judges. It might be inexcusable to dwell so long on a thing that is so plain, if it were not that some very influential men, and even some editors of ecclesiastical newspapers, have affirmed through the press that Mr. McQueen might justly have been suspended, simply on the ground that he had acted contrary to a rule in the standards of his church. They must have forgotten that if the Assembly had suspended him without granting him a trial by the Word of God, they themselves would have violated the constitution of the Presbyterian Church. It was verbally admitted in the Assembly that Mr. McQueen had a right to demand a trial by the Word of God, notwithstanding his subscription to the Confession of Faith. His trial did not necessarily involve the question whether the article which he had transgressed should be repealed. His acquittal

would have required only a majority, and, if his case had come before them in the first instance, a half of the votes of the Assembly; but the repeal of the rule would have required the votes of two-thirds of the Presbyteries. It follows from these considerations that, agreeably to the provisions of the constitution, a man may be acquitted by the General Assembly, and yet the rule which he has broken may retain its place in our standards, because the Assembly has no power over it.

2. Does the constitutional grant of a trial by the Word of God amount only to this, "that the accused shall be acquitted if it shall appear certain to the majority that the rule which he has broken is contrary to the Scriptures, but not otherwise? This view of the matter seems to have prevailed in the Assembly, and, indeed, in was used by one of the chief speakers in the majority. (*Presbyterian, July 9th*, 1842.) He contended that, as Mr. McQueen had testified his adherence to the Confession of Faith, he was not entitled to have interpreted in his favour the doubts which might arise on the question whether his marriage was agreeable or contrary to the Scriptures; and that he ought to be found guilty, unless they should feel certain that the rule in the Confession was wrong. This differs from the former view of the subject insomuch as it recognises the propriety of the court acquitting the accused if convinced that the article in the Confession was unscriptural, even while that article remained unrepealed by the Presbyteries. If this view of the matter is correct, the right to demand a trial by the Word is of no use to any who offend against any part of the standards,

unless we have in them something which a majority of the Assembly may find to be not only of doubtful authority, but positively unscriptural. Let us suppose the court to grant to the accused what they called a trial by the Word of God; a grant which, indeed, they cannot withhold without incurring the guilt of violating the constitution of the Presbyterian church. If in that trial a number sufficient to turn the scales shall vote on the principle, whether avowed by them or not, that, as the rule which he has violated is in the book, and they are not fully certain that it is contrary to the Bible, they must give their voice against him, then he has not obtained what can be called, in any proper sense of the words, "a trial by the Word of God." By a *real* trial by the Scriptures, in the case supposed, he would be acquitted; but by a nominal one he is found guilty. The court try in their own minds the rule; and, because the majority do not find it any worse than doubtful, they make his condemnation sure. His condemnation results from a rule which, viewed in the light of revelation, is doubtful to his judges, and yet their sentence appears not as the result of a trial by that rule, but of a trial by the unerring word.

3. The third view of the grant in question is, that it secures for an offending brother a trial by Scripture independently of all other standards; a trial quite the same as if the Confession had no existence. This seems to be the only view of the matter which can be taken by any who is not biased, nor has got his mind sophisticated by legal quibbles. The 4th section of the 1st chapter of the Book of Discipline does not seem to be quite so definite as is desirable for practical purposes;

but we bow to the opinion of the General Assembly, that a person who has offended against the Confession of Faith may, nevertheless, demand a trial by the Word of God. He may be accused of violating "the regulations of the church founded on Scripture;" but, lest he be tried for violating a rule which is not founded on Scripture, it is necessary to look behind the rule—to go directly to the Bible; for our standards recognise the authority of rules and regulations only so far as they are founded on Scripture. The Assembly has no power to alter an article in the constitution, though they should see that it is wrong; but it does not follow that they may condemn a man whom the Lord has not condemned. Things which involve those evils which discipline is intended to prevent, may constitute an offence by a fair implication from the article just quoted; and what is discipline intended to prevent but errors from the faith and practice taught and enjoined in the Bible? and hence the necessity that an erring brother should be tried by that infallible standard alone. For instance, discipline is intended to prevent the violation of the seventh commandment; and if we say that marriage to a deceased wife's sister is such a violation, we must go to the Scriptures to prove it. The man who is brought under discipline for this offence, must be tried by the Scriptures alone. Presbyterian discipline was never designed to interpose the church between the people and the Scriptures, as Romanism does; but only to guide and govern them by the laws contained in those holy oracles.

Plain people would suppose that, when the Assembly granted Mr. McQueen a trial by the

Word of God, they were to try him by that alone, and not by that and the Confession together: yet that he had a trial by the Scriptures alone, we have good reason to disbelieve; 1st, though *some* allowed that he had a right to a trial by the Word of God, yet if they meant a trial by that alone, we have not evidence that such a sentiment prevailed *generally*, and subsequent proceedings make the general prevalence of that sentiment very improbable. 2d. Some who did acknowledge that right, soon began to contend that, because he had transgressed an article in the Confession, he ought not to have the benefit of the doubts which might arise whether his conduct had been unscriptural. 3d. They who have studied the subject will find it impossible to believe that a majority in the Assembly had fully made up their minds that the Bible condemned his marriage. On this subject we may refer to the advocate for the Presbytery of Fayetteville, who was probably well qualified to give an opinion in the case. (See McIver *on lawful degrees*, &c., p. 13.) If this complaint of the unpreparedness of the members of the Assembly is just, which probably none will disbelieve, we have reason to conclude that those who were fully convinced on one side or other of the vexed question, as respects the Scripture argument, were but a very small number. "When the case," he says, "comes to be tried, it is found that, although there may be a member or two of the court, from previous investigation, prepared to act upon it, there is a majority who find themselves constrained to acknowledge that they have never hitherto given to the subject such a careful examination as to enable them confidently to affirm that on this subject the Confes-

sion of Faith and the Scriptures teach the same doctrine." No wonder that they could not affirm it without a careful examination, after such scholars and theologians as Michaelis, Grotius, Jeremy Taylor, Poole, Doddridge, Adam Clarke, and Sir William Jones had examined it carefully, and with full confidence affirmed the contrary. The discussion in the Assembly is said to have been able and dignified, but that it resulted in a full conviction on the part of a majority that Mr. McQueen's marriage was against the law of God, is what very many are unable to believe; and yet, unless the majority had that full conviction, he did not receive a fair trial by that law. If we have in the country many thousands of professing Christians, any one of whom, for conduct neither disreputable nor unchristian in the estimation of the Christian community, may be liable to a trial, ostensibly, according to the Bible; but in which, if the Scripture evidence against him shall seem to be insufficient, the standard of the church must be cast into the scale to make it preponderate; it certainly becomes very important to ascertain precisely what is implied in subscription to these standards. It concerns us to know well what the obligations are in respect to our conduct, whether as individuals or official characters, which it implies. If it implies that, if in anything we depart from the Confession, we are liable to suspension whether the Scriptures be against us or not, we ought to be fully aware of it. To this matter our attention will be turned more particularly in the following chapter. It may seem to some that this chapter has been quite unnecessarily prolonged by attempts to prove what few or none will deny; but both our

reading and conversation on the subject have shown that there are many who think professors of Christianity, under accusations, are not entitled to have a trial by the Word of God altogether independent of the rules of the church to which they belong. That they are entitled to a trial independently of all rules, except those of the Bible, appears, as it is hoped the reader has perceived, to be the view entertained by the venerable fathers who left us the constitution of the Presbyterian church in these United States.

CHAPTER II.

The standards of the Presbyterian church considered in relation to discipline. Theory of discipline in the Presbyterian church.

According to the Book of Discipline, "an offence is anything in the principles or practice of a church member which is contrary to the Word of God; or which, if it be not in its own nature sinful, may tempt others to sin or mar their spiritual edification." (Ch. i., sec. iii.)

This article, as the following section shows, is to be considered merely as a restriction voluntarily imposed on the discipline of the church. It is not an injunction to take up, as an offence, everything which may tempt others to sin or mar their spiritual edification, nor even everything which is contrary to Scripture. All things which are contrary

to Scripture are offences, and call for instruction, admonition, or reproof; but it does not follow that they are offences in the sense of the constitution, or such offences as require regular proceedings under charges in our judicatories. It seems to be understood by a number who bear office in the Presbyterian church, that a violation of any article in our constitution must be an offence requiring discipline, and must be sufficient to justify the suspension of a member from the church and of a minister or elder from his office. We expect to show that their view of the matter is contrary both to the theory of our ecclesiastical government and to the practice which prevails under it. Let us first turn our attention to the theory of our government.

The present constitution of the Presbyterian church in the United States was adopted on the 21st of May, 1788. It consists of the Confession of Faith, the form of government and discipline, the directory for worship, and the catechisms larger and shorter; these, according to the adopting act, are to be our constitution and the confession of our faith unalterably, unless two-thirds of the Presbyteries make a change. This last claim evidently contains both an express restriction and an implicit grant; first, a restriction preventing the General Assembly and synods, and the Presbyteries under two-thirds of the whole, from making a change in the constitution. This restriction respects every article which the constitution contains. No part of it, according to the provisions of the adopting act, can be changed except by the votes of two-thirds of the Presbyteries: such is the restriction. 2. This clause in the

adopting act contains an implicit grant; but the grant can scarcely be understood as intended to apply to every article of the constitution. If so interpreted, it must be on the principle that, in respect of some parts of the book, the venerable fathers who drew it up were confident that no alteration of them would ever be desired by any considerable number in the Presbyterian church. The grant empowers the Presbyteries by a vote of two-thirds to make alterations in the articles of which the constitution is composed, and no doubt empowers them to expunge some of those articles if they think proper to do so. The grant implied in this clause shows the confidence which the fathers had in those who should come after them; without which they would have made many of the articles absolutely unalterable, except by the violation of the adapting act; an outrage against which they could not provide. They have legislated with a view that alterations, if found necessary, might be made without any violation of their act; yet they cannot be supposed to have pointed out a method by which the Presbyterian church might commit a *felo de se*. They cannot be supposed to have pointed out a method by which the Presbyteries might reject the system of doctrine which their church has always maintained, nor that form of government without which it could not be Presbyterian. Our articles contain a system of doctrine and order which we may compare to a well-proportioned arch, from which not a stone can be removed without injury to what remains: but they likewise contain some rules, directions, and points of belief which we may compare to loose stones or rubbish piled against the

arch, but imparting no strength, and the removal of which would leave it as secure and complete as before.

To show that there are articles in the Presbyterian standards to which, while we remain in the Presbyterian church, we cannot be allowed to object, let us suppose, taking an extreme case for illustration, that a member of the General Assembly should object to the doctrine of the Trinity, and propose to that body to send down an overture to the Presbyteries, in order to have that article erased from the Confessions; and suppose farther that, from the right of the Presbyteries to make alterations in the constitution, he maintains the right of the Assembly to send down the overture and his right as a member of that body to propose that they should send it: in that case he might be told that the men who adopted the constitution and pointed out the way by which alterations in it might lawfully be made, must be understood to have meant only such alterations as are not destructive of the constitution itself, nor of the system of truth and church order which it imbodies and defends; and that, though he might not be subjected to discipline on the ground that his motion was directed against an article of the constitution, and clearly showed that he disbelieved it, yet the constitution could not protect him from a trial by the Word of God. His right to object to an article of the constitution, and propose to have it expunged, is not to be construed as a right to object to a clearly revealed and leading doctrine of the Bible. As another illustration, suppose he should declare that the Presbyterian form of government is anti-scriptural, and move that the As-

sembly should overture the Presbyteries to abolish it altogether, it can scarcely be thought that his right to propose alterations in the constitution would protect him from discipline as an opponent of the essential principles of that standard. The conclusion of the matter (and which we think unavoidable) is, that the grant in the adopting act of 1788 to make alterations in the constitution, must be restricted to such alterations as would neither be destructive of Presbyterianism nor of the system of mutually dependent truths contained in the Confession; but farther than that it cannot be restricted without being nullified. To every other alteration the grant must extend, or it has no meaning at all.

2. The second question suggested by the subject is, shall a person who has subscribed the standards be allowed to teach, preach, or publish contrary to no article which they contain? If he may not, then it follows that if 66 per cent. of our Presbyteries should vote to have an article expunged, no man in the Presbyterian church would have a right to employ his tongue or his pen against it. It follows, too, that even if all the Presbyteries were known to disapprove of a particular part of our standards, no man would be allowed to declare himself against it until they change it by their votes. If we may oppose some articles of the constitution not yet voted down—such, for instance, as that relating to marriage—and may not oppose others—such, for example, as the doctrine of the Trinity—by what rule, pray, are we to distinguish the articles which may be opposed without penal discipline from those which may not? I can conceive of no other than that church office-bearers must judge whether the

departure from the standards in the case before them is destructive of the system of truth, duty, and church order which they contain, or relates only to an article which, if given up, would leave that system secure as before. If any brother thinks this rule too indefinite, he is entreated to give us a better one, only let it be one that shall agree with our practice, which, as he must be aware, allows the free use of the tongue and pen against some articles, but not against others: or let him say plainly that such freedom ought in no case to be tolerated. If some inquire whether the penalties contemplated in the Book of Discipline should be restricted to cases of obvious departure from the Scriptures, or may extend also to the violation of whatever is essential in our constitution, the reply is, that any violation of a principle which ought to be regarded as essential must be a violation of the Word of God, and must be proved to be so before discipline can properly be inflicted. If we will inflict an ecclesiastical penalty for a transgression of the regulations and practices of the church, it behooves us first to prove that they are founded on the unerring word. (See Book of Discipline, ch. i., sec. iv.) This proof we may give in respect of those regulations which are essential to Presbyterianism; but, in the honest opinion of many exemplary and intelligent Christians, it cannot be given in respect of some things contained in our constitution; as, for instance, the rule respecting marriage.

3. The remaining question on the theory of our Presbyterian government is, whether, while it allows freedom of speech and writing against some articles, it does not, with equal propriety, allow freedom of action. If any man were to write or make

a speech in defence of drunkenness or adultery, would we not consider him worse than the adulterer or drunkard? It seems strange that we should allow brethren to defend what we denounce as immorality, to speak and write in defence of an act—as, for instance, marriage to a wife's sister—and yet hold it to be an offence so gross as to merit suspension from the office of the Christian ministry. Some consider Herod's sin as a compound of incest and adultery, and the incest the worse ingredient of the two; but what church would allow us to defend adultery as we are allowed to defend marriage to a sister-in-law? We surely would suspend a clergyman for a defence of adultery as fast as for any heresy; but we allow him with impunity to defend the man who has married his wife's sister. We may be allowed to plead in defence of a grossly immoral person, whose guilt is not fully established; or, if established, we may notice the palliatives, if there are any in his case, but we may not plead in defence of the immoral act charged against him. Does not consistency require that an article of the constitution which we will not allow a brother to transgress by his conduct, we should not allow him nor any other to transgress by speech or publication, and *vice versa*.

In respect of ecclesiastical penalties, the constitution recognises them as necessary both in regard to their existence and their various degrees, but it does not condescend to distribute them and unite them to particular specified offences. If a law necessarily supposes a particular penalty or penalties, our standards contain no laws, since they only state what is considered wrong, and leave us

to judge or be judged by the laws of God. The fathers who adopted the constitution in 1788, wisely left it to those who should come after them to determine in every case that should arise whether it must be visited with a penalty, and, if so, what penalty should be applied. Hence in every case the Holy Scriptures alone must be our guide; and if from them we cannot justify our treatment of a brother, it is vain, and even contrary to the spirit of our constitution, to seek our defence in the Confession of Faith, form of government, and Book of Discipline. Having considered the theory, we come now to the practice of discipline in our church.

We come now to the statement of some particulars—first, in respect of belief, and secondly, of practice—in which, to the best of our knowledge, no discipline for violating the constitution is ever applied; and some in which, if they should occur, it is quite improbable that discipline would ensue. In respect of these cases which probably do not occur, it becomes us to consider whether, if they should be found, we are prepared to follow them up with discipline; since, unless we are so prepared in respect of every one of them, we are not in a situation to condemn a brother in the church merely on the ground that he has transgressed our standards. Those cases to be mentioned which really exist, but are not dealt with as transgressions, may be most satisfactory to some in favour of our view, which is, as the reader is desired to recollect, that the fact of a brother having transgressed some part of our standards, is not in itself a proper ground for the exercise of discipline.

The first chapter in the Confession contains the

common list of the canonical books of Scripture. Now, it is well known that Luther, for some time after he became the German reformer, was disposed to exclude from the canon the Epistle of James. If some say we would not be justified in retaining in our church such a man as the German reformer was in the earlier times of the reformation, we shall leave every man to his own opinion on that subject. In the same chapter it is affirmed that "the true sense of any Scripture is not manifold, but one." Would we subject a minister or elder to discipline, if, like Bishop Horsley and others, he should teach that some of the prophecies have a double sense? The second chapter teaches that the Holy Ghost proceeds eternally from the Father and the Son; but would this require us to subject a brother to discipline if he should agree with the Greek church in this one particular, that the Son proceeds eternally from the Father, and the Holy Ghost proceeds eternally only from the Son? The 19th chapter says "that God gave to Israel ceremonial laws, partly holding forth diverse instructions of moral duties;" all which ceremonial laws are now abrogated under the New Testament. Suppose a brother should teach that none of the laws of Moses which held forth moral instruction are abrogated; to subject him to discipline for that error would be unnecessarily hard, at least if he did not push his theory to the legitimate conclusions. The 21st chapter teaches implicitly that the sin unto death may still be committed; but if a subscriber of our standards should teach, like Professor Campbel, of Aberdeen, and others, that the sin unto death was confined to the age of miracles, it is hoped

he would not on that account be subjected to ecclesiastical penalties.

Let us now notice a few deviations from the Confession, which have a closer connexion with practice. The 16th chapter reads thus: "Good works are only such as God hath commanded in his Holy Word, and not such as by warrant thereof are devised by men." All who sign the total abstinence pledge, or call it a good work, violate this article. Connect with this the 22d chapter, which forbids one to vow to do anything which is not in his own power, and for the performance whereof he hath no promise or ability from God. The instances given in our Confession of the sin here forbidden are vows of perpetual single life, professed poverty, and regular obedience. It is hoped we would not be suspended from our official duties, if, when our health requires a little travelling and relaxation, we should take a summer tour, lecturing and obtaining pledges to total abstinence; and yet we would be engaged in a work which God has not commanded, and pledging inebriates to that for which they have no more promise or ability from God than for regular obedience. What more ability has the confirmed drunkard to abstain from his cups than people have to abstain from marriage, the pleasures of which they have never tasted. If, in interpreting the prohibitions in the Confession, we are, like some interpreters of the prohibitory statutes of Moses, to employ *parity of reason;* that is, the kind of reasoning by which a prohibition to uncover the nakedness of a brother's wife is understood to forbid marriage to a deceased wife's sister; then the quotation now made from the 22d chapter of

the Confession clearly forbids us to take the total abstinence pledge. The reasons which are assigned in those passages for avoiding the vows of single life, professed poverty, and regular obedience, namely, want of a divine command and promise, and of ability to fulfil, all apply to the total abstinence pledge. If parity of reason is rejected in the interpretation of positive law, as, with all deference, we think it ought to be, then the 22d chapter of the Confession will not condemn the total pledge, nor the 18th chapter of Leviticus the marriage of a man to his wife's sister. The 23d chapter teaches the lawfulness of war. It is hoped we would allow a difference of opinion on that subject. It likewise teaches that the civil magistrates ought not to give the preference to any denomination of Christians above the rest; or, in other words, that the church and state should not be connected: now, suppose Dr. Chalmers and a few of his adherents should ever cross the Atlantic and offer to join the old school Presbyterian church, it is hoped they would be received, notwithstanding their avowed and tenacious adherence to the principle of national churches—a principle which lies at the foundation of all that annoyance from the civil court of which they are now complaining. They claim and receive our sympathy in their struggle against the principle contained in the 23d chapter of the Confession of Faith used in the United States. This adoption of the principle contained in that chapter would end the war, and set them as free from the control of courts and parliaments as we are ourselves. They contend for a principle which our standards disavow; yet it is

hoped, if they should apply for admission among us, they would be cheerfully received, and not unto doubtful disputations. If an approval of everything taught in the Confession were essential to admission into our church, Richard Baxter, if now alive, could not be received, nor even John Calvin himself.

Let us now notice a few cases in which we permit a departure from our standards in practice as well as belief. In respect of the public reading of the Scriptures by the ministers of religion on Sabbath, and of the form of marriage, and perhaps a few other things, exact conformity to the constitution is not at the present day, and probably never was made imperative. The directory for worship (ch. ix., sec. i.) requires that, when baptized children come to years of discretion, and have been properly instructed, "if they should be free from scandal, appear sober and steady, and to have sufficient knowledge to discern the Lord's body, they ought to be informed it is their duty and their privilege to come to the Lord's supper." There is nothing mentioned in that chapter which amounts to evidence of regeneration. There are among us sessions who, instead of telling such youths that it is their duty and their privilege to come to the Lord's supper, would feel bound in conscience and by their uniform practice to refuse admission to a considerable number of them. Must we subject all these sessions to discipline for keeping back from full church membership young people who have all the qualifications mentioned in the directory, until they undergo an examination on experimental religion and give probable evidences of regeneration? The 24th chapter of the

Confession implicitly teaches that such as profess the true reformed religion should not marry with infidels, papists, or other idolaters; neither should such as are godly be unequally yoked, by marrying with such as are notoriously wicked or maintain damnable heresies." Now, we never hear of a female member of our church being disciplined for marrying a swearer, a Sabbath-breaker, or one who denies the Supreme Deity of Christ, and required to show her repentance by forsaking him. Is she less guilty in any of those cases than if she had married a moral and pious man, who had been the husband of her sister? In the same chapter it is said that a man may not marry any of his wife's kindred nearer in blood than he may of his own. In this case there is not always the same freedom allowed, though it cannot be more directly contrary to the standards than the others. As a justification of severe discipline in this case, it is pled that it is contrary to the Confession of Faith; and so it is, like a number of things which are never noticed by the church courts, but it is contrary to that book only in a point which has no connexion with the system of evangelical truth contained in it, nor with anything which is essential to Presbyterianism, or by which that system is distinguished. It may be said that this is a more important rule than those which church members are allowed to transgress with impunity; if so, that must be showed, not by the book which contains them all and makes no distinction, but by the Bible alone. In respect of the authority of the constitution, they are all alike; yet in them all, except this one, people are generally allowed to act as they please. If the late decision of the

General Assembly in the case of Mr. McQueen is to be justified, it must be on the ground that his conduct was, beyond all reasonable doubt, a flagrant transgression of the law of God. To that ground it will be necessary to turn our attention after considering a few things which the discussion of the marriage question has brought up; and which, while they are not understood, prevent a candid examination of the Scripture authority by which our judgment at last must be formed.

Some may now put the question, "of what use are standards of faith or subscription to them in a church?" First, it is answered negatively; they ought not to be used as a basis of discipline, so that no man may be received into the church until he approve every item which they contain, or that every person now in the church who disbelieves or deviates from anything which they contain must be brought under ecclesiastical penalties. We have seen that the theory of our constitution does not contemplate such discipline, neither does the church put it generally in practice. But to answer the question positively, the standards of the church being published to the world, and accessible to all, give to every one an opportunity of knowing what Presbyterianism is as a system of faith and government. Though they do not show what any Presbyterian believes on matters which have no necessary connexion with Presbyterianism, they give a presumption, as strong as that in favour of his honesty, that the man who has subscribed them is a Calvinist, and that he approves of clerical parity and government by elders. Every denomination has a creed, negative or positive, whether it be subscribed or not. For instance, Unitarians

are as well known to agree in the denial of the Trinity as if they had subscribed to the denial of that doctrine. It occasionally becomes necessary for religious bodies to prove in courts of law what their principles really are, and in that case they may find that it would be to their advantage if the articles of belief by which they are distinguished had been published authoritatively to the world. It is also to be considered that every religious denomination think their own principles the best, and from this it necessarily follows that they should feel bound in duty to teach them for the good of mankind; and surely it is desirable that the inquirer into their principles should learn them from a public authoritative creed rather than from the conflicting, and often inaccurate, statements of individuals. We cannot conceive of any valid objection to the statement by a united body of Christians of those truths to which they adhere as a system. There is nothing in this to prevent the freest inquiry that any pious man can desire. If the inquirer shall come to disbelieve the system to which he has subscribed, or any truth which is essential to it, his duty is plain; he has only to retire and unite with a denomination whose faith agrees with his own. The fact, that the body with which he first united had a public creed, makes his duty to change his connexion more plain, and in that respect he finds it an advantage. Even if there were no absolute certainty in theological belief, we cannot see that there would be any impropriety in a number of men being united by their avowed belief of a system of doctrine, the disbelief of which should be held as sufficient ground of exclusion from their society. But certainty is attainable, and is really

possessed by every pious man, in respect of all that truth without the belief of which he could not be saved ; and as all that truth is essential to vital Christianity, it is just as reasonable to unite in declaring our belief of it as in professing to be Christians, and as reasonable to exclude from our communion the man who denies that truth as the man who should deny the authority of the commandments.

If the creed of a particular church should contain, and hold as essential to office-bearing in that communion, a few divine truths which some sincere Christians have not been able to discover in the Bible, and cannot believe, there may even in that case be no impropriety, but considerable advantage. Though all Christians hold fast the truths which are essential to salvation, they do not all hold them consistently; and if office-bearers, and especially ministers of religion, differ widely respecting those doctrines which give greater consistency to the system of Christian truth, it is very obvious that evil would arise from having them united as teachers and rulers of the same Christian denomination. We do not doubt of the salvation of a pious Arminian, such as Wesley ; but we consider it certain that to have one minister preach in the morning that God's people were unconditionally elected from eternity, and another preach in the afternoon, to the same people, that election is not a doctrine of the Bible, but of the schools, would perplex the inquirer, trouble the Christian, and eminently gratify the infidel. To avoid great evil in respect of the teaching and ruling of the church, it seems necessary that some errors which are not regarded

as inconsistent with Christianity, should be inconsistent with office in a particular church.

Let it be noticed now that there are in the creeds of some churches, perhaps of every church, some articles, the belief of which is not regarded as essential to piety, which do not serve to present the essential doctrines more consistently, and the uniform belief of which, among the office-bearers in a church, is not essential to efficiency in teaching and government. There are some articles which are detached from the system of truth, and of which the Scripture authority is doubtful among intelligent and pious men. If they are regarded as matters of opinion, or as recommendations, they may, perhaps, be harmless; but if attempts are made to bring people under discipline for every departure from them, as if they were properly articles of faith or certain rules of duty, such attempts will tend to bring creeds and confessions into disrepute; and, if carried far, will make them rather a curse than a blessing. There are some truths which, in order to mutual edification and order, the religious teachers in a church must understand alike; but, though all Scripture is given by inspiration of God, there are some parts of it respecting which a difference of opinion in a church may be a smaller evil than a division. Such diversity of belief as has now been described, ought, as we are persuaded, to be a matter of forbearance, even if it should relate to articles contained in the standards of our church. As there are in every religious society a few zealots for uniformity in doubtful matters as well as in clearly revealed truths, it seems it would be well to have church

standards free from all that is doubtful, lest peace and harmony should be interrupted without a cause. There are some who, when they have faith in doubtful matters, will not have it to themselves, but will impose it on others; and hence it might be very desirable to expunge from our Confession a doubtful article of belief, which has been the occasion of trouble in the churches for many years.

CHAPTER III.

Inexpediency of an act no ground for excluding a person from the church. Ecclesiastical penalties not to be inflicted for conduct that is only of doubtful propriety.

In the former chapters it has been shown that the trial of an offender in the church ought to be a trial by the Word of God, independently of any other law; and that the standards of the Presbyterian church are opposed to the infliction of ecclesiastical penalties, except for principles or conduct which are contrary to the Holy Scriptures. We now propose to show that we ought to feel fully certain that the principles or acts of persons accused are contrary to the unerring word before we proceed to inflict on them the discipline of the church. This implies that we are not to excommunicate or suspend for acts which are merely inexpedient. "All things," saith the apostle, "are lawful for me, but all things are not expe-

dient." If we punish for what is but inexpedient, we discard the apostle's distinction, and identify inexpediency with unlawfulness. If a man transgress the law of God, his conduct is worse than inexpedient; and if only inexpedient, it is not a transgression of divine law. It is often difficult, in some cases impossible, to perceive what would be expedient even in our own case; and it is harder still to perceive it in the case of our neighbour. As friends and fellow Christians, we may give him our opinion; but the rule for the church courts in such cases is, to "let every man be fully persuaded in his own mind." It is highly inexpedient for a poor young man to marry a woman also poor, and whose education has taught her nothing but the art of amusing herself; yet no church would bring him under discipline for such folly as that. If marriage to a sister-in-law were as inexpedient as what has now been supposed, or even as the marriage of men of twenty years of age to women of sixty, that does not make it a subject for discipline, unless, like the church of Rome, we proceed independently of Scripture authority. But, in the case of marriage to the sister or niece of a deceased wife, the inexpediency is mere supposition. We have known a few cases of those marriages, all of them happy ones, and have been credibly informed of many more. The proportion of them that prove happy seems to be quite as great as of other second marriages. It is evident that they do not belong to the class of sins which are punished in the present life. Pious people are so united, without any apparent injury to their piety or obstruction to their growth in grace. New England, where,

perhaps, they are most common, and least objected to by the church, does not seem to be inferior in moral conduct or pious sentiments to Kentucky and North Carolina, where they are visited with severe discipline. All this does not settle the question whether they are Scriptural; but it shows that if they are not so, they present that most unaccountable phenomenon, of respectable persons, and even devout Christians, committing open sin, living in it through life without signs or profession of repentance, and dying without having received on account of it any intelligible mark of the displeasure of God. The reader is respectfully entreated to pardon this short digression from the direct line of argument.

We return to the proof of the proposition, that nothing which is doubtful should be made the ground of exclusion from the church, or of a minister from the duties of his office. This proposition has nothing to do with the keeping back of a person during the time that his trial is pending in the judicatories of the church. Whether this keeping back is right or wrong, is not the question here. Neither has our proposition anything to do with the case of a man whose Christian character is unimpaired, but who, owing to the opinions he has imbibed, cannot supply the wants of a congregation in our connexion; such, for example, as the case of a minister who, from conscientious scruples, has come to decline baptizing their children. We need not proceed against such a man as an offender against the authority of God any more than we would if he had lost his reason; but we would find him incompetent to the office of a pastor in the Presbyterian church,

leaving his standing in the church of Christ unimpeached. The subject before us now is not that of mere incompetency to an office, but belief or practice in opposition to the revealed will of God; and here we contend that full certainty that he has offended against that revelation is essential to the Scriptural administration of penal discipline. When we say that nothing which is only doubtful in the light of divine revelation should be visited with ecclesiastical penalties, we mean by things doubtful not all things that are doubted, but all that are doubtful to intelligent and pious men after careful consideration, or in respect of which they are ranged on opposite sides: such is the case just mentioned respecting baptism; and such, too, is that of marriage to the sister or niece of one's deceased wife: though some good men have arrived at full conviction on the one side and some on the other. This marriage, if agreeable to Scripture, does not disqualify a minister for his pastoral duties, and ought not to suspend him from the discharge of them, unless its contrariety to the divine standard is clearly proved.

The cases of discipline recorded in the New Testament are very few. First, the case of Hymenens and Alexander for blasphemy; second, that of the Corinthian for having his father's wife, (not his widow;) and third, any man who was a heretic after the first and second admonition; such the apostle commands to be rejected. By a heretic here we understand a schismatic, one who led, or attempted to make, a party against the apostles, who were then on the earth proving their authority by miracles. In those cases there was nothing which could be doubtful to any con-

siderate pious mind. Two of them were cases of gross immorality, and one of persevering resistance to apostolic authority.

The Apostle Paul knew that doubts were, and would be, in the Christian church respecting the propriety of certain acts or modes of life. He removed them in some cases, but, knowing that they would arise in others, as an inspired Christian moralist, he gave rules for their treatment. These directions respect our duty to ourselves and our duty to others; but our duties in these two respects are widely different. Our doubt respecting the lawfulness of an act is an imperative reason why we must abstain; but it is also a reason why we must not condemn our brother who does the same act, and, for ought we know, conscientiously. In respect of certain meats which the apostle mentions, probably no doubt existed respecting the innocency of avoiding, but some respecting the innocency receiving, them. The duty of every one who had those doubts was to abstain himself. "He that doubteth is damned if he eat." "But he is not bound to condemn his neighbours if they eat." "Why dost thou judge thy brother, or why dost thou set at naught thy brother? for we must all appear before the judgment seat of Christ." "In doubtful things hast thou faith, have it to thyself; happy is he that condemneth not himself in that which he alloweth." A judicious writer in the Churchman of October 28th, 1837, when urging the duty of abstaining from marrying a wife's sister, says, "the very existence of doubt is sufficient." I answer, it is sufficient reason why he should abstain himself, but no reason at all that he should condemn his neighbour who acts differently. A

sentence from Doddridge is not inapplicable here. "Let us receive our weaker brethren with tenderness and respect; not despising those who scruple what we practice, nor judging those who practice what we scruple. A brother ought not to be tried for doubtful things; but if he is put on his trial, and in danger of losing his place or standing among Christians, where is the authority of Scripture, of law, of common sense, or of common humanity, for refusing him the advantage of every doubt respecting his guilt? If there were a doubt whether a person accused had committed the act laid to his charge, none would refuse him the advantage of it; but why he should be denied the advantage of a doubt respecting the criminality of his act, it is hard to understand. If there is a doubt respecting his guilt as a violater of God's law, what difference can it make whether the doubt respects the *evidence* or the *morality* of the act? If in giving our vote we disregard our doubt, whether it respect the evidence or the nature of the fact, we run the risk of condemning a man whom the Lord has justified. An able writer in the "Spirit of the Nineteenth Century" for August 19th, 1842, speaking of the prohibition to marry a sister-in-law, exclaims: "Strange if we cannot tell whether there is such a prohibition in the Scriptures." Yes, say we, and stranger still if, being unable to tell whether it is there, we have the temerity to condemn our brother for disregarding it.

Observe, now, that we have no divine authority for condemning a man because his conduct approaches the confines of propriety. We have no right to remove the Almighty's land-marks; and to condemn a man who has not gone over them is, in

effect, to remove them. It is to make the field of rectitude a little narrower than he has seen good to make it. When will the world believe that "God never made his laws for man to mend?" Let us warn our neighbour to keep far from iniquity and temptations; but, unless he actually transgress, he is not justly liable to be cast out of the church, or suspended from the exercise of office. Warn men, if you will, to close their shops, offices, and stores before it is late on Saturday; but do not suspend them for Sabbath-breaking unless they have broken the Sabbath. "Is it not perilous," says Doctor Livingston, (Dissertation, page 103,) "to advance near the brink of a precipice?" Yes, truly, and let us caution men against such rashness; but let our ecclesiastical penalties be confined to cases of certain trasgression, otherwise we ourselves shall not only go near the precipice, but over it. The doctor pleads for decency and virtue, which is all very well if we take God's law, and not our own impressions, as the standard of them. If marriage to a wife's sister is not condemn by the Bible, it is in vain to cite decency and virtue as witnesses against it. Whatever violates decency and virtue, is condemned in Scripture, either expressly or by implication, which we expect to show that the marriage in question is not. There is a factitious as well as a natural or Scriptural sense of decency and virtue: to take an extreme case for illustration, many an honest Roman Catholic thinks it is both indecent and sinful for a minister of religion to marry at all; but we know that his sentiment of abhorrence on that subject is not derived from the will of God, and, therefore, do not respect it.

It is given by S. Dwight and others as an objection to the marriage of one's sister-in-law, that there are plenty of women, and, therefore, such a marriage is easily avoided. This is just the argument that an unfeeling old miser would use to his daughter when he denies her to the poor, but worthy and industrious, youth to whom she has innocently and exclusively given her heart. In most parts of the world females are not scarce; but does this justify us in annoying members of the church for acts which are not contrary to the law of God, nor to the peace and order of society? It was not ungracious in God to forbid the use of one tree in paradise, but it would not have been well for a fellow-creature, even though an angel, to forbid the use of another, and say to our first parents, Ye have enough without it. If an act is contrary to the will of God, let us avoid it, whether easily or with difficulty. But if it is neither wrong in itself nor doubtful to one's own mind, why should a person avoid it, and why should we, under pain of ecclesiastical panalties, require it of him? Even the Roman Catholic church, which carried out their marriage prohibitions to seventh cousins, could still say, with truth, that a man might find plenty of women without their forbidden degrees. This twattle about plenty of women we detest as degrading to human nature, and in particular to the female sex, inasmuch as it makes no account of mutual preferences, but would reduce matrimony to the level of any mercantile transaction; such, for instance, as buying cattle. However far some may err in their preferences, we cannot help believing it to be the will of God, that those who are to unite in mar-

riage should be drawn together by that sentiment which causes them to choose one another in preference to others who may be in all respects equal or superior.

The subject of accommodating the feelings of other Christians deserves some attention; and the more, that a good deal has been made of it by our opponents; and it seems to have weighed considerably in the decisions of ecclesiastical courts. Some attention to the feelings of others in respect of things indifferent is no doubt the duty of a Christian; but how far it is to be carried out is a question which must be left to his own benevolent feeling and discretion. Surely it will not be affirmed by those who have fully considered the subject, that in everything of that sort he must disregard his own feelings, and make the feelings of others the rule of his duty; that we apprehend would be to carry the apostle's recommendation much farther than he intended. Especially, we have no right to use the discipline of the church to compel people, by ecclesiastical penalties, to yield to the feelings of others in all things that are indifferent; and the apostles never propose to use it for that purpose. If the church subject her members to discipline for offending the weak, she makes the weak the rulers, and the strong the ruled or the slaves. Surely the strong may have a little of their own way in matters of mere expediency, as well as the weak. May not a man be very accommodating to his brethren, and yet, after he contemplates a second marriage, which promises much good to himself and his children, refuse to give it up on account of scruples among his neighbours, for which he sees no foundation in the word of

God? Christian morality implies yielding in small matters: "If any man smite thee on the one cheek, turn to him the other also;" but it does not require us, if any man cut off the one cheek, to turn to him the other. If Christian brethren would be offended with a line of conduct which we can easily avoid, let us avoid it; but it is not so clear that, for their pleasure, a man should forfeit an advantage which is likely to promote the happiness of himself and his children through life, and which the Word of God has not forbidden.

There are duties, and some of them very important, which are to be enforced by exhortation, but not by ecclesiastical penalties. Of this kind were the free-will offerings among the Jews. God required them, the pious cheerfully gave them, but the priests could not demand them. A demand for them would have marred their comeliness, and have been inconsistent with their nature as free-will offerings. There are many calls now for contributions to bible, missionary, and other societies: Christians obey them as from God, but what they give must be free-will offerings; which they could not be, if the church were to demand them under any penalty whatever. With these duties we would class that accommodation to others which the apostle recommends. It cannot be enforced by penal discipline without being divested of loveliness and rendered unfit to excite the gratitude of fellow Christians.

Some opponents of the marriages now considered, regard anything as a subject for discipline which is calculated to lead others into sin. It is true that the apostle has said, "If meats make my brother to offend, I will eat no flesh while the

world standeth, lest I cause my brother to offend;" that is, cause him to act contrary to his conscience, and, therefore, to his God: but does the apostle propose discipline for eating such things? No; his rule in such cases is, to let every man be fully persuaded in his own mind. Happy is he that condemneth not himself in that which he alloweth. It is true, that our standards in a passage or two seem to recognise the principle of discipline for acts which may lead others into sin, but on that subject they seem not free from ambiguity. The safe rule is, to interpret such passages as are obscure, by such as are plain. Now, the seventh section in the first chapter of the form of government declares that "the Holy Scriptures are the only rule of faith and manners; that no church judicatory ought to pretend to make laws to bind the conscience in virtue of their own authority; and that all their decisions should be founded on the revealed will of God." Here there is no ambiguity; and it is evident that, agreeably to our constitution, whatever apprehensions we may have of the conduct of our brother as an example, we must not decide against him except by the word of truth. In respect of the marriages considered, if they are not wrong in themselves, it is difficult to conceive how they can be calculated to lead others into sin; and yet, if it were certain that they had been injurious in that way, we can properly do nothing more than teach, warn, and exhort against them, unless we first prove that they are contrary to the Word of God. Though the discussions of the marriage question have shown that there is considerable misapprehension on this subject, there is the less need to dwell on

it, as the last General Assembly admitted freely that Mr. McQueen should be acquitted if the Scriptures did not condemn his act. In answer to his allegation, that the Scriptures do not condemn the marriage of a man with his wife's sister, the Presbytery of Fayetteville, who are in this approved by the General Assembly, say: "This, indeed, would be a good reason for appeal if it could be proved, and would justify the reversal of the sentence; that is, the sentence of the Presbytery, suspending him from the office of the ministry. This admission is so far well; yet it seems to imply one capital defect, viz., that the *onus probandi*—the obligation to lead proof—lies with Mr. McQueen. Now, he might attempt to prove that the Scriptures did not condemn his marriage, and, from agitation of mind, in his peculiar circumstances, he might possibly fail; and his friends, too, might fail through want of preparation; which we by no means insinuate that they did: but had they all failed, it was still the duty of the accusers to prove that the Scriptures certainly did condemn his act; and every one who had still a doubt, was bound to vote for his acquittal. To cast the *onus probandi* on the accused is anything but fair, and any civil court would be ashamed of it.

Observe next, that the transgressions which require suspension from church membership, or from office in the church, must be not only certain, but of great magnitude. So it was when the apostles were personally present with the churches. Blasphemy, incestuous adultery, and obstinate schism against apostolic authority were not only certain evils, but also pre-eminently sinful. To protect or allow them in a church would defeat

the end for which, on Scripture authority, churches are formed. But would it not be best to have the church free from smaller offences too, since the purer the better? Yes, the purer the better, as in many things we offend all; if we suspend for every offence, no church can exist. Even the Perfectionists will not say that *all* Christians are perfect, or that every sin should be a reason for expulsion or suspension. Let it be remembered that the church on earth, at its best, is not an assembly of saints made perfect, but of saints to be perfected by the means of grace, and who for that purpose ought to be in the church. The distinction between faults generally considered, and faults which must be visited with ecclesiastical penalties, is not a novelty, but is as old as the church of God. Under the Old Testament dispensation there were a few great offences, for which the offenders would be cut off by the rulers; but there were many for which they could inflict no such punishment, but which they must leave to the infallible judgment of God. In the New Testament church we find the same distinction. The apostles preached and warned against all sins, but called for discipline against very few. They have left on record just three cases, which have been noticed. In respect of penalties, the Scriptures only can guide us, for the Presbyterian constitution does not attempt it.

The following quotation from Robert Hall is well deserving of attention: "As the sentence of exclusion is the severest the church can inflict, and no punishment just but in proportion to the degree of preceding delinquency, it follows of course that he who incurs the total privation of

church privileges must be considered eminently in the light of an offender." The case of Mr. McQueen is perhaps as hard as that of a lay member who is excommunicated. Church discipline should not be so strict as to destroy the church itself, nor so lax as to prevent it from exerting a salutary influence. God is able to mete out exactly the reward of every sin; but the rulers of his church, who at best are fallible, he has restricted to the duty of discipline in cases of eminent offence. He teaches them to let the tares grow among the wheat, since, if they had even the wisdom of angels, they could not separate them with certainty; but that is no reason why they should spare the thistles, which of course they are able to distinguish, and which they have his authority to pluck out. Ought not these things to be considered by those who think the strictest discipline is always the best? The reader may ask, "who knoweth not such things as these?" but the writer is convinced, from what he has read and heard on the marriage question, that the errors he has been contending against have an extensive existence and a pernicious influence.

Let it now be remarked, before closing this chapter, that, to speak of an act as being a great sin, if a sin at all, is to speak with no high respect of divine revelation. Has God given us a perfect rule of duty, which marks some great sins so dubiously that the best of commentators and other theologians are divided on the question whether they are sins or not; and many of them know not which side of the question they ought to hold? But perhaps this is the only case in which great doubt exists among the learned and the good

respecting the morality of an act which a part of them regard as exceedingly wicked, and deserving of exclusion from the church. It has often been noticed, to the honour of the Scriptures, or rather of their great author, that they make those things most plain which are most useful; that is, they teach with greatest plainness the doctrines which all Christians must receive, and point out most distinctly the duties which are most profitable and the sins which are most destructive: but few will venture to say that marriage to a sister-in-law is one of the sins which are pointed out with great clearness. The conflicting opinions which have existed, and which still exist concerning it, fully show that it is not a sin of that class. That general uncertainty is no reason why a man who thinks it sinful in any degree should not avoid it; but we consider it a reason why the church should not disturb those who have entered into it under a sense of duty.

CHAPTER IV.

Containing a concise history of opinions on the Marriage Question.

A HISTORY of opinions on the marriage question may be interesting and instructive, and especially may serve to show the doubtfulness of the case. First; the sentiments of the Pagan world on this subject have been noticed by writers on both sides

of this question, and are, perhaps, not unworthy of consideration. The marriage of mother and son among the Persians, and of maternal brothers and sisters among the Athenians, were odious even to the heathens. Some of the marriages in the eighteenth chapter of Leviticus, if marriage is the subject there, were in bad repute among the heathens, and others were not.

The belief of the Jews, especially the ancient Jews, is important on this subject. In the discussion of the question, a distinction has been made between the prohibitions in Leviticus and the prohibited degree; the prohibitions being those which are expressed, and the prohibited degrees being both those which are expressed and all others which, though not expressed, are equally near of kin. (See Vaughan's Reports.) The Scribes and Pharasees, and the Jewish people generally, considered the express prohibitions only as binding; and of course did not object to the marriage of a man to his wife's sister or niece. "It is well known," says Seldon, "that marriage with one's wife's sister was practised among the Jews." Dr. Livingston (p. 139) would have the testimony of the Jews disregarded, because they lost the key of knowledge; but if they misunderstood the prophecies respecting the Messiah, and did not perceive the spirituality of their own laws, how would that disqualify them as witnesses to the belief and practice which obtained among themselves, and had prevailed among their fathers? If they misunderstood the doctrine of the atonement, it does not follow that they could not be good witnesses respecting typical rites and ceremonies. Surely Saul of Tarsus, before his con-

version, would have been a competent witness respecting the practices which prevailed under the Jewish law, touching the righteousness of which he was blameless, though he had not found the key of knowledge ; and what his testimony in this case would have been we know, inasmuch as we know the belief of the Pharasees, to whom he strictly adhered.

We find among the Jews only one small sect, the Karaits, who forbade the marriages now principally in dispute—the sect that a writer on the other side of this question calls "The Virtuous Karaits. Perhaps they were as virtuous as Popish monks and anchorites, who abstain from marriage, and from most of the comforts of life ; or Mussulmans, who fast the forty days of the Rahmadan ; but surely their opinions are worthless on the subject of marriage. They forbade marriage, 1st, to 10 of a man's own kin ; 2d, to 32 of kin to his near of kin ; 3d, to nine of his wife's near of kin ; 4th, to 26 of the near of kin to his wife's near of kin; and 5th, they forbade two that were near of kin to marry to near of kin ; as, for instance, a man and his brother to a woman and her brother's widow. Their number of prohibitions on all those grounds was eighty-four. They had eighty-four positions around the man, from none of which he might take his wife ; and as in many of these eighty-four positions there would be several unmarried females, the number of women whom they forbade him to marry would amount to a few hundred. No doubt they could, with truth, use the modern argument, that there were still plenty of women with whom they did not forbid him to marry. Even the church of Rome,

which carried out her prohibitions to the seventh cousin by consanguinity, affinity, and relationship by godfathers and godmothers, could use the same argument. If the virtue of the Karaits lay in something else than their marriage laws, it is nothing to the purpose on this question; and if in those laws, it must be granted that none except the Roman Catholics ever surpassed their virtue or came nigh to it. Nevertheless, it must be granted that, among all the sects which reject the Gospel of Jesus Christ, the sect of the Karaits is one of the best.

The modern Jews, in so far as we have been able to ascertain their opinions, are against interpreting the eighteenth chapter of Leviticus as relating to marriage at all, or at least as forbidding it with a wife's sister. It is true, that Henry VIII obtained from them, as from others, such opinions as he wanted; and the opinion given by them to a king who was able to do them a great deal of good or evil, and who could lay out money most freely to accomplish or to justify his licentious purpose, is confidently quoted. If from the time of Moses the Jews had been taught to avoid marriage with females collaterally related by affinity, it is difficult to conceive how the contrary usage ever came to prevail among them; and harder still to conceive that, being prevalent, there should be no recorded denunciation of it by their prophets.

The next thing to be noticed is, the opinion of the Christian church in the apostolic age, and through the first centuries. The apostles must have had among their converts people united in marriage according to the laws and usages of all

the nations whither they went: yet we have no account of them requiring separation, or giving any admonition against them, except in the case of the incestuous Corinthian, and his marriage does not seem to have had the sanction of the law or usage of any nation or people. The strength of this negative argument to show that the apostles were not against such marriages as were practised in their time, is exactly equal to the probability that, if they knew them to be an abomination before the Lord, we should find them directing the churches to resort to discipline on account of them, or the parties to separate, or the unmarried to avoid them. The probability that they would have noticed these marriages if sinful, and that their disapprobation would be left on record, presents itself to our mind as a certainty, when we find how they took notice of adultery, fornication, and other licentious practices. We have frequent accounts, both direct and incidental, of their difficulty with Pagan customs and opinions in respect of things not more likely to be noticed than the marriages among their converts if these were sinful.

Some of our opponents quote the council of Elvira, held A. D. 305, and of Nicocaesarea, held A. D. 314, both against the marriage of a man to his wife's sister. These decisions, they remind us, "were rendered at least two centuries before the earliest date assigned for the commencement of the Roman apostacy, and before the church of Rome was corrupted by worldly prosperity." They may have been all that time before the 1260 prophetic days of the apocalyps, but anti-christ was long in the church before he reigned; and these councils were not before the corruptions which

prepared the way for the regular enthronement of that idolatrous persecuting power. Even in the days of the Apostle Paul the mystery of iniquity began to work. Had not marriage itself sunk into a degree of disrepute before the time of these councils, and an ascetic spirit spread in Christendom? It has been well remarked by an able writer, when contending for the authenticity of the passage in the 8th chapter of John, "that all the forgeries upon the sacred writings that have been discovered in early times are in favour of great strictness; none of them would be objected to for grantingundue freedom, or being too merciful to transgressors. The fabricated stories found in the apochryphal gospels are always founded on the most severe and ascetic views." Additional restrictions relating to marriage were quite in keeping with the other characteristics of the first centuries after the apostles. Though it be true that popery was not established so early as the dates of these councils, yet many of the corruptions of popery existed before them. In the history of the primitive church we nowhere find the marriages in question condemned till the distinct developement of the main elements of popery, the scattered materials of which the great idol temple was afterward constructed. The primitive Christians, in the spirit of oriental enthusiasm, were not satisfied with the adoption of the Christian principles of ethics, nor even with the severest Levitical prohibitions; and they invented for themselves new rules of continence which God never imposed. (See Grotius de jure belli, L. 2, ch. v.) As early as the time of those councils, marriage was denied by many to the priests, and others were dissuaded

from it as a state less holy than celibacy. (See Tertullian and Jerome at large.) Gibbon says: "The practice of second nuptials was branded with the name of legal adultery; and the persons who were guilty of so scandalous an offence against Christian purity were soon excluded from the honour, and even from the alms, of the church." If it be found that the marriage of a wife's sister was prohibited among a people who not long after prohibited all second marriages—a people who regard celibacy as the nearest approach to divine perfection, and at a time when monastic principles and institutions were established, when baptisms were performed on adult persons in a state of nudity, and when a virtue was made of that exposure, as an imitation of Adam and Christ—that discovery would prove but little as to the anti-papal origin of our marriage prohibitions. At whatever time such corruptions in belief and practice are found to have prevailed to any considerable extent, we may be assured that there was a very dark and corrupt state of opinion and conduct for at least a generation before them. When we find that the church came to forbid second marriages altogether, we would naturally suppose, though we were not informed of the fact, that she would condemn some of them a good while before condemning the whole of them: and yet the ecclesiastical disapprobation of marriage to a sister-in-law does not appear from history to have been long before that of all other second marriages. It seems to be a warrantable, and even an unavoidable, conclusion from history, sacred and secular, that the opinion and sentiment of Christians in the time of the apostles, and afterward,

until the corruptions prevailed which led the way to the great apostacy, was not against such marriages.

"It will not be denied," says the Biblical Repertory, "that the earliest records of the ancient church relating to this subject condemn the marriage under consideration;" and, in proof of it, the writer quotes the apostalic constitutions. If we had no other information than what the reviewer is pleased to give us, we would infer that those constitutions are really apostolic—actually drawn up by the apostles, and accordingly inspired. Now, it is the general opinion that those constitutions are spurious. They are said to have appeared first in the fourth century, but to have been much changed and corrupted since. (*See the Encyclopedia of Keligious Knowledge.*) The councils referred to in the debate in the General Assembly, and which seem to give the most ancient testimony of Christendom against the marriage now in question which can be found, were likewise in the fourth century: so neither those councils nor constitutions are so early as several corruptions which now distinguish the church of Rome. The first three hundred years of Christianity afford no testimony against this marriage; and those three centuries, have left us more instruction, though we do not include the inspired writings, than the twelve centuries which follow them. It is unfortunate for our opponents, in their appeals to Christian antiquity, that they cannot go beyond the fourth century, and draw their testimony from times when the church retained more apostolic purity, and when fewer of the corruptions which paved the way for regularly organized popery had been introduced. That the councils held in the fourth

century condemned these marriages, is readily accepted as a proof that there was a sentiment opposed to them some time before; but it likewise proves that there was a sentiment in their favour, and that they occurred to some extent among Christians; for, if they had not, the councils would have found more urgent business than to condemn them. Yet, if the opposition to them could be traced much nearer to the time of the apostles than the fourth century, what could it avail when we know that the mystery of iniquity began to work in their days; and, also, that it was first manifested, not in the form of gross immorality, but of affected sanctity, in bodily exercise, in ascetic ordinances, "touch not, taste not, handle not," in "voluntary humility, worshipping of angels, and neglecting of the body, not in any honour to the satisfying of the flesh?"

The belief of the Papal church since it became an organized anti-christian power, may claim some attention, since it has occasionally been brought up in this controversy. If the views of that church were against us, it would not be alarming, since their belief does not form even presumptive evidence on a moral question. Accordingly it is without the least danger of being proud of our auxiliaries, and merely with the view of stating things as they are, we make the affirmation that, in respect of Scripture authority relating to the marriages now disputed, the church of Rome is not against us. It is true, that their prohibitions once reached to seventh cousins both of the man (the prepositus) and his deceased wife; and likewise of the relations by godfathers and godmothers. Bishop Parker has got in his table

thirty relations, all within the degree of first cousins by consanguinity and affinity; but a Roman Catholic table, drawn up on the same principle, would probably extend the prohibitions to several thousands, yet always leaving women enough without the forbidden ground; which, to some of our brethren, seems to be a good defence of restrictive laws. But the Roman Catholics did not say that they found all their marriage laws in the Bible. Those which were understood to be forbidden in the Bible were held, by at least the sounder doctors in the church of Rome, to be without the dispensing power of the Pope, so that he could not grant leave to contract them; but over all those which were forbidden only by the church he was understood to have a dispensing power. The marriage of Henry VIII., being to the widow of his childless brother, was understood to be forbidden, not by the laws of Moses, but of the Romish church, and, therefore, to be within the dispensing power of her head, the Pope. Respecting the marriage of Henry, the great matter considered by the Roman Catholic divines was respecting the dispensing power; and in many cases they maintained that the Bishop of Rome had authority to dispense with the laws of God in this as in other cases;" but Henry had influence enough to obtain from Roman Catholic colleges the opinion that the Pope, in granting an indulgence to marry a brother's widow, had transcended his powers. Dr. Livingston, referring to the marriage of a sister-in-law, says: "This sin was always condemned and execrated by the church of Rome:" true, indeed it was condemned, as well as the marriage of her seventh cousin; but it was never condemned

in that church as unscriptural, and without the dispensing power, until the influence of Henry VIII., himself a Roman Catholic at that time, obtained a contrary opinion from some of the Roman Catholic doctors. Enough has been said as to the authority of the Roman Catholics; for, like the Karaïts among the Jews, they have made their opinions worthless by carrying their restrictions very far beyond the bounds of religion and reason.

On the case of Henry VIII., of whose conscience we read with astonishment in the debates in the General Assembly, a very few remarks may be desirable. "With respect to the English universities," says the London Eclectic Review for Jan., 1841, "it is to be remarked that all accounts concur in stating that very great difficulty was experienced by the king in obtaining from them an answer favourable to his wishes. It appears, from a passage in Wood's Athenæ Oxoniensis, that the decision of Oxford in favour of the divorce was only procured 'after two angry letters from the king;' and that when at last the judgment was obtained, it was extorted by a violent interference with the constitution of the university, and passed surreptitiously at night, amid open and fearless remonstrance. The difficulty of obtaining a favourable answer from the University of Cambridge appears to have been equally great; and the manner of extorting it at last nearly the same."

The judgment of the Protestant community comes now to be considered. Their judgment will abundantly show that the question is a doubtful one, as the pious, learned, and wise are on opposite sides of it. By an ordinance of Holland,

dated in the year 1580, "no man may marry his brother's widow or his deceased wife's sister." The laws of Prussia (we believe) are opposite on this subject to those of Holland. The British Parliament adopted the Levitical statutes relating to marriage, which certainly they had a right to do, just as any modern nation may adopt, if it pleases, the statutes of the same law respecting witchcraft, mixed garments, and mixed seeds; but it is to be recollected that the English civilians do not consider those statutes binding by divine authority. Chief Justice Vaughan remarks (page 232) that the prohibitions mentioned in the 18th of Leviticus were positive laws of God to them, (the Jews,) *quatenus*, they related to, and terminated in degrees of kindred therein specified; and the breach of them punishable by the punishments ordained to that end in the Mosaic law. And in these respects none of them are binding to any other people than the Hebrews. The opinion of all the English lawyers, in so far as we have been able to consult them, or to obtain information concerning them, agrees with that of Judge Vaughan. The article in the Confession of Faith on the subject of marriage was not approved by the English Parliament. The English law has regarded these marriages, not as void, but voidable; that is, they may be disannulled by legal means during the life of both the parties; but if once one of the parties is dead, the marriage must be held to have been good and the children to be legitimate.

Let us now observe the state of public opinion in this country. "In every state of the Union," says a writer in the "Spirit of the 19th Century"

for August, 1842—"in every state of the Union, I believe, the legislature have made laws for the marriages of their people. Massachusetts, New Hampshire, Connecticut, Vermont, New York, New Jersey, Pennsylvania, Delaware, Maryland, have all made laws specifying the prohibited degrees of marriage; the prohibitions are full, generally ascending to grandparents and descending to grandchildren; including uncles and nieces by consanguinity, the father's sister, mother's sister, the wife's mother, daughter, and grand-daughter; but in no single one of all these states is the wife's sister prohibited." Judge Kent remarks that in this country the Levitical degrees were not considered to be binding as a rule of municipal obedience.

Extract from STORY'S *Commentaries on Conflict of Laws, ch.* 5. *Title* MARRIAGE, *Sec.* 115.—"Hitherto we have been speaking of cases of relation by consanguinity, between which and cases of relation by affinity there seems to be a clear and just moral difference. The English law, however, has treated both classes of cases as falling within the same predicament of prohibition by the Levitical law. Hence it has been there held that a marriage between a father-in-law and the daughter of his first wife by a former marriage is incestuous and unlawful; and, indeed, there seems something repugnant to social feelings in such marriages. The prohibition has also been extended, in England, to the marriages between a man and the sister of his former deceased wife; but upon what ground of Scriptural authority it has been thought very difficult to affirm. In many, and, indeed, in most, of the American states a dif-

ferent rule prevails, and marriages between a man and the sister of his former deceased wife are not only deemed in a civil sense lawful, but are deemed in a moral, religious, and Christian sense lawful, and exceedingly praiseworthy. In some few of the states the English rule is adopted. Upon the continent of Europe most of the Protestant countries adopt the doctrine that such marriages are lawful.

Without quoting more of the law authorities on the subject, let it be observed that those now quoted we supposed to be under the influence of Christianity in the Protestant form of it; and it will not be questioned that the religion of a people has considerable influence on their laws, and on the sentiments of men of the profession of the law, whether they be men of piety or not.

It may be interesting now to have the opinions of men of learning and influence of former times, in Christian communities. But, before producing authorities, it is necessary to remind the reader that in those days when giants were on the earth, difficult questions were investigated with a discrimination which, in our times, is very uncommon. The distinction between the Levitical prohibitions and the prohibited degrees in Leviticus is clearly laid down by Chief Justice Vaughan and others; by the former, they mean the prohibitions which are expressed, and by the latter, those which are expressed and those which are not expressed, but in which there is the same nearness of kin as in the former. The marriage of a brother's widow belongs to the former class, if marriage is the subject in the 18th of Leviticus, and the marriage of the sister and of the niece of a former wife to

the latter. This distinction accounts for the fact, that some eminent authors of former times are claimed on both sides of this question. Grotius is claimed by us as in favour of the lawfulness of marriage to the wife's niece or sister, and yet we grant that he acknowledged the permanent obligations of the prohibitions. This acknowledgment is the amount of the quotation produced from his writings in the General Assembly with the view of presenting him as an authority against the marriage which was then under adjudication. That by the prohibitions Grotius meant only those which are expressed, it seems impossible to doubt; for he could not be ignorant of the distinction which Vaughan did not invent, but received with approbation from authors of former times. Michaelis, Doddridge, Adam Clark, and others, might be quoted as maintaining the existence and authority of marriage prohibitions in the law of Moses; and maintaining also the lawfulness of marriage to a deceased wife's sister, which is not mentioned in his laws.

The following quotations are from the London Law Magazine for May, 1839, contained in vol. 21st; "Some of the most venerated writers on sacred subjects, including Jeremy Taylor, have contended that the marriage laws of the Jews in the patriarchal ages (which, according to Grotius, authorized polygamy) are not binding on Christians; and some of our best oriental scholars, including Sir William Jones, assert that the precepts in Leviticus are not directed against marriage."

In Jeremy Taylor's *Ductor Dubitantium*, book 2, ch. ii., his third rule is as follows:

"The judicial law of the Jews is annulled or abrogated, and retains no obliging power, either in

whole or in part, over any Christian, province, commonwealth, or person." He subsequently proceeds to this very question, and remarks: "All the degrees in which Moses' law hath forbidden marriage are supposed by very many now-a-days that they are still to be observed with the same distance and sacredness, affirming, because it was a law of God, with the appendage of some penalties to the transgression, it must still oblige us Christians."

"This question was strangely tossed up and down upon the occasion of Henry VIII.'s divorce from Queen Catharine, the relict of his brother, Prince Arthur; and, according as the interest of princes uses to do, it very much employed and divided the pens of learned men, who, upon that occasion, gave too great testimony with how great weakness men that have a bias do determine questions, and with how great force a king that is rich and powerful, can make his determinations: for, though Christendom was then much divided, yet before then there was almost a general consent upon this proposition, that the judicial degrees do not, by any law of God, bind Christians to their observation."

To show what little respect is due to the opinions obtained by Henry VIII., or that they are not to be received as the general opinions of either Protestants or Roman Catholics at that time, let us hear the testimony of a competent witness. Cavendish, in his Life of Wesley, says that "the foreign universities were fed with such large sums of money, that they easily condescended to the requests of the commissioners;" and Crook, the king's agent in Italy, writes that he found "the

greatest part of the divines in all Italy mercenary," and tells Henry that "he doubts not but all Christian universities, *if they should be well handled*, would earnestly conclude with his majesty;" adding, that "if he had been in time *sufficiently furnished with money*, though he had procured, besides the seals which he then sent, 110 subscriptions, yet it had been nothing in comparison of what he might, and easily would, have done."

No doubt that the influence of the tyrant Henry VIII. gave a bias to the opinions of Christendom which, even at this day, has not ceased to prevail. Even now some talk gravely of his conscience; and we grant he may have retained as much conscience as other common murderers; that is, just as much as his Maker would not allow him to cast away. It is true, he always preferred murder to adultery; but whether that was owing to the purity of his conscience, let others judge.

Chamberlain. "It seems the marriage with his brother's wife
Has crept too near his conscience."

Suffolk. "No; his conscience
Has crept too near another lady."
SHAKSPEARE.

In the appendix to Mr. Alleyne's pamphlet (first published in 1774, and reprinted in 1810) on the positive side of the marriage question, may be seen confirmatory letters from laymen and clergymen of all persuasions; among them is the following, from Dr. Benjamin Franklin:

Craven-street, 15th October, 1773.

DEAR SIR,

I have never heard upon what principles of

policy the law was made, prohibiting the marriage of a man with his wife's sister, nor have I ever been able to conjecture any political inconvenience that might have been found in such marriages, or to conceive of any moral turpitude in them. I have been personally acquainted with parties in two instances, both of which were happy matches, the second wives proving most affectionate mothers-in-law to their sisters' children; which, indeed, is so naturally to be expected, that it seems to me, wherever there are children by the preceding match, if any law were to be made relating to such marriages, it should rather be to enjoin than to forbid them; the reason being rather stronger than that given for the Jewish law, which enjoined the widow to marry the brother of a former husband where there were no children, viz., that children might be produced who should bear the name of the deceased brother; it being more apparently necessary to take care of the education of a sister's children already produced, than to procure the existence of children merely that they might keep up the name of a brother. With great esteem, I am,

Dear sir,

Your most obedient humble servant,

B. FRANKLIN.

Let us next observe the doubtfulness of the question among the Protestant churches. Dr. Livingston tells us that "all the Protestant churches have uniformly considered, and unequivocally maintained, a marriage with a sister-in-law to be incestuous. The Protestant translators made conscience of adhering as closely to the phrase-

ology of the original as could be done without destroying the sense ; and as no church admitted the lawfulness of marrying a wife's sister, or supposed it to be matter of doubt, the translators never deemed that the passage in question would ever have been perverted to such an error." (Diss., page 137.) These remarks are quoted by the doctor from the Christian Magazine. To their authority we oppose Jeremy Taylor's, and the fact, that the English Puritans never consented to receive the article in the Confession of Faith on that subject.

" The table of prohibitions which we had once in our Bible was drawn up by Archbishop Parker in the year 1563, and was a politic measure, which, without bringing the first and second marriages of Henry into farther litigation and inquiry, assumed a principle which, by implication, established the legitimacy of Elizabeth, and, consequently, her right to the throne ; moreover, it was the interest of her subjects that her legitimacy should not be called in question ; and nothing could be so likely to prevent this as the doctrine implied in the admonition prefixed to the table of Archbishop Parker, which made Henry's marriage with former wives illegal, and that with Ann Boylene, Elizabeth's mother, lawful. Of this prelate it is said, by one of his biographers, that the great blemish in his character was his preferring the laws of the queen to the laws of God. The table of Archbishop Parker became the canon law, the church being under the influence of Elizabeth, but never became the law of the land, which it could not do without an act of Parliament." (*Eclectic Review* for Jan., 1841.)

"The article on marriage in the Confession was never received by the English Puritans nor by the English Parliament; but was received by the Scotish Parliament and Church. The Presbyterian church in this country adopted bodily the law of Scotland; and those who adopt a large code of laws made by another people in a former age, are very likely to adopt some which they would not make for themselves; but whether the Presbyterian fathers in this country adopted any which they would not have framed for themselves if they had not found them, is more than can be ascertained."

Among the Presbyterians of this country, from the beginning, we find a difference of opinion respecting the marriages in question, but with a great preponderance in favour of the position that they cannot be proved to be unscriptural. For the facts to be stated we are indebted to Mr. McIver's Review of the acts of the synod of New York and Philadelphia, and of the General Assembly in his essay on lawful degrees of marriage.

On the 20th of September, 1717, the affair of Andrew Vandyke, that was referred from the Presbytery of New Castle to the synod, came under consideration; and, a considerable time being spent in discussing upon it, it was determined, *nomine contradiscente*, that his marriage with his brother's wife or widow was incestuous and unlawful, and their living together as the consequence of that marriage is incestuous and unlawful; and that so long as they live together they be debarred from all sealing ordinances.

On the 31st of May, 1758, a case of conscience

was proposed, and the consideration of it deferred till next meeting. On the 22d of May, 1759, the case of conscience brought into the last synod, namely, whether a man who has married his half-brother's widow may lawfully live with her as his wife; it was a little considered; but, as the members had not generally closely examined the matter in its general nature, it was deferred till next synod, and the several members were ordered to bring or send their sentiments in writing, and inform the absent members to do the like. On the 23d of May, 1760, the same case was brought under consideration, and several members offered their thoughts on it; but the father consideration was deferred till the afternoon, when, after some farther converse, Messrs. Samuel Finley, James Finley, Blair, Miller, Kettletas, and Gilbert Tennant were appointed a committee to bring in a sum of what they can find in Scripture and the English law on that point, against Monday afternoon; and also a second case from Donegal Presbytery, where a brother and sister's relicts married together; and on a third case, of a man's marrying two sisters, one after the other's death. On the 27th of May the committee brought in their report. The synod referred the consideration of the case until next synod, and recommended to the several members to examine the affair more thoroughly before that time, and give their sentiments on it. The second and third cases of conscience were deferred till the afternoon. In the afternoon the synod judged as to the second case, that of a brother and sister's relicts married together, that, however inexpedient such a marriage might be, yet, as they could not find it prohibited

by the Levitical law, it is not to be condemned as incestuous.

The third case of conscience, viz., that of a man marrying two sisters, the one after the death of the other, was considered; and, though the majority of the synod thought the marriage was incestuous, and contrary to the laws of God and the land, and agreed that it was sinful and of dangerous tendency, yet, inasmuch as some learned men are not so clear in this point, it was agreed to resume the consideration of it next year.

25th of May, 1761, the cases of conscience respecting marriage were resumed; that is, the case of a man married to his half-brother's widow, and another to his wife's sister; and, after mature deliberation, the synod judged as follows: "That as the Levitical law, enforced also by the civil law of the land, is the only rule by which we are to judge of marriages, whoever marry within the degrees of consanguinity or affinity forbidden therein, act unlawfully, and have no right to the distinguishing privileges of the churches; and as the marriages in question *appear* to be within the prohibited degrees, they are to be accounted unlawful, and the persons suspended from special communion while they continue in this relation." So, after considering the one of these cases at two annual meetings and the other at four, the synod did not affirm that they were within the prohibited degrees, but only that they *appeared* to be within them, and on the ground of that appearance of unlawfulness they excluded the parties from the church. "Judge not according to appearance, but judge righteous judgment."

"On the 24th of May, 1770, by reference from

the Presbytery of Philadelphia, the question, whether a man may lawfully marry his wife's brother's daughter, was brought in and read. The consideration of it was deferred till the afternoon, and afterward till the next year. It was taken under consideration next year, and, after deliberation upon it for some time, was again delayed till next synod. At that meeting, which was in 1772, the case was considered for some time, when Messrs. McWhorter, Strain, Matthew Wilson, and George Duffield were appointed to prepare a minute on the case, and bring it in to-morrow morning.

22d May, 1772. The committee appointed yesterday upon the case respecting marriage, brought in a minute, which, after being corrected, was approved; and is as follows:

"After mature deliberation, the synod declare their great dissatisfaction with all such marriages as are inconsistent with the Levitical law; which, in cases matrimonial, we understand is the law of our nation; and that persons intermarrying in these prohibited degrees are not only punishable by the laws of the country, but ought to suffer the censures of the church; and farther judge, though the present case is not a direct violation of the express words of the Levitical law, yet, as it is contrary to the custom of Protestant nations in general, and an evidence of great untenderness, and so opposite to such precepts of the Gospel as require Christians to avoid all things of ill report, and all appearance of evil, and what is offensive to the church, that the persons referred to in this instance ought to be rebuked by the church session, and others warned against such offensive

conduct; and, in case these persons submit to such rebuke, and are in other respects regular professors, that they be not debarred of Christian privileges.

"And Mr. Hunter is ordered to read this minute publicly in his congregation, where the persons live referred to in the above case."

In this minute the synod seem to teach that the marriage under their consideration was contrary to the Levitical law, but they do not venture to affirm it.

On the 20th of May, 1779, a reference from the Presbytery of New Castle was brought in by the committee of overtures, respecting a certain Anthony Duchane, who had married the sister of his former wife, and praying the advice of synod whether the said Duchane may be admitted to enjoy the privileges of the church, or what ought to be done in such case.

The synod proceeded to consider the above case, and, after debating to a considerable length, agreed to refer it to the meeting of next year. Next year the synod deferred the case till their meeting in 1781; and that year the Presbytery neglected to bring in their minutes, which caused a farther delay till the meeting in 1782, when Anthony Duchane preferred a petition that he might be no longer debarred the privileges of the church on account of said marriage. After full and deliberate discussion, the question was put, shall Anthony Duchane and his wife be capable of Christian privileges, their marriage notwithstanding? which was carried, in the affirmative, by a considerable majority. Six elders, viz., Alexander Miller, John King, John Craighead,

Colin Farquar, James Power, the Rev. James Finley, and Robert Cooper, chose to express their dissent. That decision was followed by a recommendation from the synod to their people to abstain from such marriages, to avoid giving offence.

At the meeting of the synod in 1783 remonstrances from sundry congregations were brought in by the committee of overtures, requesting a reversion of the decision of last synod respecting the marriage of a man to his former wife's sister. After much deliberation, synod agreed to reconsider the subject to-morrow morning. Next day they discussed the subject at considerable length, both morning and afternoon. On the day following, after expressing their disapprobation of such marriages as imprudent and unreasonable, they gave their opinion that, as some things may be done very imprudently and unreasonably which, when done, ought not to be annulled, it was not necessary for the parties to separate from one another; yet they could not be received into the communion of the church without a solemn admonition at the discretion of the session of the congregation to which they belonged; and the synod publicly recommend it to all their members to abstain from celebrating such marriages, and to discountenance them by all the proper means in their power. Mr. Finley dissented, and requested leave to enter his reasons of dissent on the minutes, which was granted. The substance of his reasons is, that the synod allows the parties to cohabit, and also to partake of the privileges of the church; that they object to the marriage only

as being imprudent and unreasonable; and that they gave no proof that the marriage was one of those acts which may be done imprudently, but which, when done, ought not to be annulled.

"As the synod of New York and Philadelphia was formed into the General Assembly in the year 1789, and no case of unlawful marriage succeeded to that of Anthony Duchane till fourteen years after, his was the last which came before the synod."

We proceed to give the acts of the General Assembly on the subject of the marriages objected to. The General Assembly of 1797, in the case of a man who had married his former wife's half-brother's daughter; and afterward the General Assembly of 1802, in the case of a man who had married his former wife's sister's daughter, expressed themselves thus: "*Resolved*, that, although the Assembly would wish to discountenance imprudent marriages, or such as tend in any way to give uneasiness to serious persons, it is their opinion that the marriage referred to is not of such a nature as to render it necessary to exclude the parties from the privileges of the church."

In 1804 there came before the Assembly a case from the synod of Pittsburg, of a man who had married his former wife's sister's daughter. The Assembly declared that they could not advise to annul such marriages, or pronounce them in such a degree unlawful as that the parties, if otherwise worthy, should be debarred from the privileges of the church. But as the cases in question were supposed to be doubtful, the Assembly was constrained to leave it to the inferior judicatories

under their care, to act according to their own best light, and the circumstances in which they find themselves placed.

The next case which came before the Assembly is that of William Vance, whom the session of Cross Creek church, in the state of Ohio, suspended or excluded from the church for marrying the sister of his deceased wife; and whose case went up by appeal to the General Assembly of 1821. The Assembly gave, in their resolutions, the opinion, that such marriages are highly inexpedient and unfriendly to domestic purity, and exceedingly offensive to a large portion of our churches; but they were not prepared to decide that they are so plainly prohibited in Scripture, and so undoubtedly incestuous, as necessarily to infer the exclusion of those who contract them, from church privileges: they, therefore, referred the case of Mr. Vance back again to the session of the church of Cross Creek, to be disposed of in such a manner as the said session might think most conducive to the interests of religion. This is the first complaint we find in the supreme judicatories of the unfriendliness of such marriages to domestic purity, which seems to be the prevailing objection made to them now.

In June, 1824, there came before the Assembly by appeal from the session of Ottery's church, under the jurisdiction of the Presbytery of Fayetteville, the case of Donald McRimmon, a ruling elder, who was suspended from the exercise of his office, and from the enjoyment of sealing ordinances, on a charge of incest, for marrying the sister of his deceased wife. Dr. Ely and Mr. McIver were heard at some length—the former

in support of the appeal, and the latter in support of the decision of the session. Dr. Leland, Mr. Robert Kennedy, and Mr. William L. McAlla were appointed to prepare a minute to be adopted by the Assembly in the appeal. They reported on the third of June, and, after some discussion, the farther consideration of it was postponed; and the subject of the appeal was committed to Drs. Blatchford, Richards, Chester, McDowell, Romeyne, Millar, and Janeway, maturely to consider the subject, and report it to the next Assembly.

May 24th, 1825. The committee appointed by the last Assembly on the subject involved in the appeal, did not report. *Resolved*, That they be continued. May 19th, 1826, the committee appointed by a former Assembly on the subject involved in the appeal, did not report. *Resolved*, That this committee be discharged, and that this subject be committed to Dr. Neil, Dr. Heron, Mr. Fisher, Dr. Chester, and Dr. Axwell, with instructions that they report during the sessions of the present Assembly. Just ten days after, that committee reported that, in their opinion, no relief can be given to the said McRimmon without an alteration in the constitution, ch. xxiv., sec. iv., the last clause of which declares that "the man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman any of her husband's kindred nearer in blood than of her own." But, inasmuch as a diversity of opinion and practice obtains in this very important subject, they submitted the following resolution, namely:

Resolved, That the Presbyteries be, and they hereby are, directed to take this matter into serious

consideration, and send up, in writing, to the next General Assembly an answer to the question, whether the above quoted clause of our constitution shall be erased? The report was adopted.

At the meeting in May, 1827, fifty Presbyteries reported against the erasure, eighteen in favour of it, and twenty sent no report. It seems to be the fair presumption that those twenty Presbyteries were in doubt, and, therefore, did not report either for or against the erasure.

The last case of the kind, that of the Rev. Archibald McQueen, came before the Assembly of 1842 by appeal from the Presbytery of Fayetteville, who had suspended him from the exercise of his office and the communion of the church because he had married the sister of his deceased wife. The Assembly, by a large majority, refused to sustain the appeal. Sixty-eight voted not sustain, eleven to sustain, eight to sustain in part, five were *non liquit*, and one was excused from voting. Thirty-four had obtained leave of absence, and seventeen are not accounted for. Of the thirty-four, seven obtained leave of absence that morning, and twelve the previous day.

The cases of Presbyterian discipline which have been stated, (13 in all,) came before the supreme judicatories in the course of one hundred and twenty-five years, ending in the year 1842. Those cases consist of one marriage between the relicts of brothers and sisters, two marriages to the widows of brothers, one of them a half-brother, four marriages to the nieces of former wives, and six to their sisters. It is not to be understood that these are the whole, nor even any considerable part, of such marriages contracted by

members of the Presbyterian church during that time. In many cases, probably, the parties acquiesced in the decision of the inferior judicatories, which were sometimes against such marriages, and others not. There were one decision of the synod of New York in 1835, and two of the synod of Kentucky since that time, which were not carried up to the General Assembly. It is to be supposed that some acquiesced in the decisions of Presbyteries, and some even of sessions ; or they were prevented by death, or otherwise, from prosecuting their appeals. But it is believed that in the greatest number of cases, church members so united lived together undisturbed by the discipline of the church. The conflict of the decisions of past assemblies producing great uncertainty respecting the action of succeeding ones, would produce great reluctance to submit to the expense, the loss of time, and the vexatious delays which might be dreaded in carrying a case through sessions, Presbyteries, synods, and assemblies. In the case decided in the synod of New York in 1835, the parties had been married seven years ; and the case of Anthony Duchane was before the synod of New York and Philadelphia six years ; but how long it had been before the inferior judicatories, we are not informed. Other cases were before the supreme judicatories from two to four years. Nine of them came up by reference owing to the doubts entertained by the inferior courts ; and, owing to the same cause existing in the highest court, two were referred to the inferior judicatories, to deal with them at their own discretion. One of these cases was that of marriage to a former wife's niece,

and the other of marriage to a former wife's sister; and in this last the session are enjoined to give, at their own discretion, a solemn admonition.

If any man, after reading over the minutes of the Assembly in relation to the marriages objected to, will say that they are not doubtful, but undoubtedly sinful, he can be understood to mean only that they are not doubtful to him, and should not be so to others. Some of us are fully convinced that they are innocent, but must admit that they are doubtful to the Presbyterian church, and even to the Christian world; and, following the apostolic rule for such cases, we contend that they ought not to be visited with the discipline of the church.

It is alleged by a late writer against these marriages, that the synods and assemblies were guilty, in relation to them, of timidity, of bad policy, of seeking peace at the expense of purity. Of what or of whom could they be affraid? Were the parties at the bar, or they and their friends together, so powerful in any of those cases as to overawe the majority of a body of ministers and elders, the churches' representatives, assembled out of all parts of the country, from New York to Georgia, and from the Mississippi to the Atlantic Ocean? The statement of the question is enough. If they were capable of deciding under the influence of fear, they might be more likely to be affraid of those who were opposed to such marriages than of those who favoured them. But there is no necessity for believing that they acted so unworthily. They declared that the cases were doubtful, and, finding them doubtful, some of them were affraid, as they all might have been, lest, by

excluding from the church on account of them, they might curse whom the Lord had blessed, and so pass a sentence which would be reversed in heaven. The fear of God might deter them from rash condemnation. It is our prayer that none of us may ever have the temerity to vote for the suspension of any church member without the fullest conviction that the Bible will sustain us; and let people charge us with timid policy if they will, but we shall at least have a clear conscience.

It was said in the last General Assembly that none of the former decisions of the supreme judicatories admitted that the marriage of a man to his wife's sister is agreeable to Scripture; that is true, but none of them said the contrary, except, perhaps, the synod of 1717; and since then the subject has been before them at about twenty annual meetings, at most of which it came before them several days. The synod of 1717 pronounced the marriage to be incestuous and unlawful, but the grounds on which they pronounce it incestious we find not; neither can we tell whether by *unlawful* they mean contrary to the Scriptures, or to the laws of England, to which these states at that time were subject. It is true, that the judicatories have generally disapproved of the marriages under consideration, as being displeasing to many good people, as being offensive to the church, as being doubtful, and betraying want of tenderness, and, before the revolution, as being unlawful. One Assembly gives as one of the grounds of its decisions, but, as it seems, with too little inquiry into facts, their contrariety to the customs of Protestant nations.

In the decisions of the synods and assemblies on the marriage question, there are some Scripture directions which with deference we must consider as being greatly misapplied. For example; when the apostle directs to "abstain from all appearance of evil," we understand him as saying, "abstain from what is doubtful in any degree to yourself, as well as from all approaches to known sin;" but the spirit of the argument raised on that question from the passage, may be given in the following: "Cause your fellow Christians to abstain from all that seems evil to you, even though to them it should seem very good." Surely the apostle has not required us to abstain from all that seems wrong to others Their convictions are not the rule of our duty: "Why is my liberty judged of another man's conscience." A Christian will abstain from some things, because they seem wrong to his brethren; but how far he is to extend this accommodation, must be left to himself, since, though it may be our duty to enlighten his mind and give him advice, we have no right to compel him to it by the discipline of the church. To attend to the feelings of others is an important Christian duty; but surely the apostle does not require that the weak should be yielded to in every prejudice, especially when that prejudice is supported by neglect of the means of information.

Another thing is remarkable in those cases where the synods or assemblies have suspended men from church privileges for marrying women related to them by affinity: we do not find that they ever suggested the appointment of a committee to deal with their conscience and urge them to put away their wives; ought not that to have

been done, if their living together was certainly sinful? and did not the uniform neglect of it show that the judicatories were not fully convinced that God required the separation? Before the American revolution the ecclesiastical courts, without opposing the laws of the land, might have used their influence and authority to bring about such separations. In most of the states they cannot make such a use of their authority now, without having a conflict with the civil power, since it legalizes such marriages. In some cases the rule of duty is, "obey magistrates, be subject to the powers, that be;" in other cases the rule is, "obey God rather than man, or God and not man." If we can be certain that the first rule is not applicable here, let us follow the second, only let us recollect that, before we begin a conflict with the powers, and enjoin on church members the duty of resisting the laws, we must be certain that they are wrong and that we are right. If we take the ground, that such marriages are void from the first, or that our sentence makes them so, the parties are free to marry other persons in so far as the laws of the church are concerned; and then we should have men in the states prison for bigamy, and still remaining in good and regular standing in the church. If that state of things may be brought about by the church doing her duty, let it be so; only it is a case in which we should not proceed until the path of duty is very clear. The action of our church courts on the marriage question shows no such clearness as the justification of their sentences requires. In one case, of marriage to a sister-in-law, after the synod of New York and Philadelphia had it three years

under consideration, they found that it *appeared* to be within the prohibited degrees, not that it certainly was so; and, judging according to *appearance*, they pronounced the sentence of suspension. Suspensions are always understood to continue until there be evidence of repentance; and in the case of a man living in the sin for which he was suspended, there cannot be evidence of repentance till he forsake it: as, for instance, if it is for marrying his sister-in-law, the suspension is until he show repentance by sending her away; in that case it is difficult to see how the church could complain of him if he married another. The consequences are too serious to be encountered in a doubtful case, or for the appearance of a fault. A criminal court would make a strange exhibition if it should sentence a man to the states prison because his conduct *appeared* to have been fraudulent.

It is farther remarkable, that the judicatories allowed brethren to speak in defence of the acts for which others were brought to the bar and condemned. Even those who denounced the conduct of the accused as no better than adultery, or even worse, did not object to hear it defended. Now, if a church member were on trial for anything which is certainly known to be eminently sinful—as, for instance, adultery—brethren might be heard in his defence, but their defence would be confined to an examination of the evidence or the palliatives in the case, if there should be such, and no brother in the court could be allowed to defend crime itself. If a brother were accused of adultery, and admitted the fact; and if a few brothers should contend that his conduct had not been unscriptural; the Assembly would never allow such a defence, nor

allow those who had made it, to escape from discipline themselves. If marrying a sister-in-law is a flagrant sin, like what has now been mentioned; or like theft, blasphemy, or perjury; how is it that ministers in the Presbyterian church are allowed to write and publish, and on the floor of the General Assembly to plead, in justification of it? surely a paragraph in a newspaper or a speech in the Assembly in favour of any of those sins would procure our expulsion from the church. From those facts it is evident that rulers in the church are not prepared to set down the marriages to which they object, in the list of things that are certainly condemned by the Word of God. But surely the man who votes for the suspension of a minister from his sacred functions, or a church member from his peculiar privileges, without being certain that he deserves it, is not himself avoiding the appearance of evil. We speak not of the few who feel the full conviction that the act for which they condemn is unscriptural, but of those who have some doubt on their minds, and yet vote for severe discipline. Let them be reminded that whatsoever is not of faith is sin, and that he that doubteth is condemned for the part he takes in the condemnation of a brother, as much as for other acts without the conviction of his own mind. But what if the guilty should escape? Let them be tried, if there are presumptions of their guilt; and if then we cannot fully prove it, they ought to escape from us, and the Lord will take the matter altogether into his own hands. If, owing to doubt on our minds, we vote for the acquittal of one who is proved to be living in a connexion which the Bible certainly condemns, our fault lies in not making ourselves

better acquainted with the subject before, and not in withholding our vote against him while doubt remains on our mind.

Having considered the necessity of having all doubt of the criminality of an accused person removed before ejecting him from the church, it may be necessary now to specify the points which must be fully established before the marriages in question can be properly declared to be unscriptural. It will clearly appear that those positions do not form independent arguments, but are one chain, of which every link must be good, or the whole is useless. Whether a chain consists of argument or of steel, the whole strength of it is exactly the strength of the weakest link. If we suspend a body of a thousand pounds weight on four separable links, each of them being sufficient to bear two hundred and fifty, the whole may be sustained; but if we suspend the whole on one chain, the weakest link must be of sufficient strength to support the whole weight, or the body must fall. It may be convenient to put one link next the point of suspension in preference to another, but no possible arrangement can affect the principle, that the weakest of them must be of sufficient strength. However simple and worthless this principle may seem, it may be that due attention to it would result in the rejection of half the logic by which the world is deceived. The point of suspension is the 18th and 20th chapters of Leviticus, or we may say the 18th chapter, since that contains the whole on which the Scripture argument depends. The first of the links, as we choose to arrange them, is, that incestuous marriage is one of the subjects in the 18th of

Leviticus, from the 6th to the 17th verse inclusive. The second is, that the term wife in that passage signifies widow, which, if it does not, the ground of the common inference from the widow of the brother to the sister of the wife is removed. The third is, that the statutes in that passage ought to be applied by construction or parity of reason to cases which they do not express. The fourth is, that, being fairly applied by parity of reason, they include the marriages which are objected to; and the fifth is, that those statutes are laws for the Christian world. It is presumed our opponents will readily admit that all those positions are indispensable to their cause, and that if any one of them should break, the remainder, however strong, would serve them nothing; and if one of them is doubtful, the conclusion drawn from the whole must be uncertain. It is not necessary that all who object to the 24th article of the Confession on the subject of marriages, should agree in rejecting the five positions which have been stated; for every man who considers any one of them unsound, or even doubtful, is bound, by his regard for consistency, to oppose that article. Some of our opponents believe, or at least they once believed, that a new translation of Leviticus 18: 18 is essential to the validity of their argument; and others, that the common translation is the correct one, and that it sustains, or at any rate does not invalidate, their conclusions. That difference does not make their union respecting their grand conclusion inconsistent; and neither does the difference among us imply any inconsistency in our arrival at a common result. It is necessary now to examine the passage in the law of Moses, from

which the unlawfulness of the marriages now disputed is maintained.

CHAPTER V.

Remarks on the eighteenth chapter of Leviticus, so far as it is understood to be connected with the subject of Marriage.

THE eighteenth chapter of Leviticus is one entire section or edict in the Mosaic laws. It is with due solemnity introduced in the name of Jehovah, an introduction which is repeated at the beginning of the 19th chapter, to show that another section has commenced. A part of the acts contained in this 18th chapter are repeated in the 20th, with penalties annexed. The first five verses of the 18th chapter contain a renewal of God's avowal of relationship to his people, preparatory to his reassertion of claims to their obedience. 2d. That claim is stated and enforced in the form of general and particular warnings to avoid the customs and manners of the heathen, particularly those of the Egyptians and Canaanites. And, 3d, some injunctions are given to observe God's ordinances and judgments, which, if a man do, he shall live in them. The judgments and ordinances of the Lord to the Israelites were of various kinds, which commentators have distinguished as ceremonial, judicial, and moral; but which, being all obligatory on that people, it was

not necessary always to keep separate in the demands made on their obedience ; and hence the difficulty which is occasionally felt in endeavouring to ascertain whether a particular law given to that people is still in force, or was confined to the Jewish commonwealth.

The sixth verse lays down a general prohibition, which is followed by a list of particular prohibitions extending to the 24th verse. But a number of these precepts have no connexion with nearness of kin, (the subject of the sixth verse,) otherwise lying down with a beast, or passing children through the fire to Molech, would be uncovering the near of kin. It seems arbitrary to say that all the verses from the 7th to the 18th are connected with the 6th, but not those from the 19th to the 24th. If we take as our guide the meaning of the words "near of kin to him, or remainder of his flesh," there is no difficulty, as we can easily see who are his blood relations among those whom the man is forbidden to uncover ; but if the fact, that a female is set down in the list of blood relations, and preceded and followed by those that are such, which is the case with the stepmother, if that is to mark her as a blood relation in the intention of the legislator, several questions will arise which require particular consideration. The opinion that she is, in these circumstances, included among the near of kin mentioned in the sixth verse, even if it should be wrong, is entertained by so many and by such high authorities, that it ought not to be rejected without careful examination. If these statutes were of European or American origin, it would be very natural to suppose that every statute which they contain

was included in the tittle or general principle placed at their commencement; yet, even in the acts passed in these countries, we may occasionally find a particular law which the tittle does not cover, which has no natural relation to the general principle expressed, and cannot be supposed to have been intended as a specification under it. The general tittle no doubt always expresses the principle which is contained in a number of the particular acts which follow it, but which is not always contained in the whole. The writer recollects of reading, in the Edinburgh Review, a number of particular enactments of the British Parliament, which never could be supposed by the legislature to be comprehended in the principle expressed in the general tittle of the act, any more than an enactment against manslaughter, if found in an act against horse-stealing, could be understood as a specification under that species of theft. These cases may be, perhaps, regarded as blunders in legislation, and, therefore, as possessing no similarity to the laws of Moses. Generally, in the acts of European or American legislators, we expect that acts which are classed together should all come under one principle; that they should be in their nature similar; and we are apt to expect the same in the laws of Moses. It must be granted that those laws, being inspired, were the best for the people to whom they were given; but the Asiatics were never accustomed, and, as our missionaries testify, are not now accustomed, to exact classification or logical arrangement in discourse. Now, while we maintain the superiority and relative perfection of the inspired laws, we must admit that they are adapted to the style as well as the

previous customs of the east; and to interpret them on the principle of distinct classification, such as we would generally expect to find in the laws of Greece or Rome, or the modern nations of Europe, might probably lead to mistakes. The conclusion, that the prohibitions from the 7th to the 17th verse inclusive are all specifications of the rule contained in the sixth verse, or that all the females there forbidden to the man are his near of kin, can be drawn only from the understanding that Moses would not mix up prohibitions which are dissimilar, and place before them a rule to which only a part of them belongs. If it could be shown that Moses has in no other passage mixed up laws which are dissimilar in their principle, there would be a strong presumption that he has not done it here: but we find him giving moral, ceremonial, and judicial laws mingled together; laws, of the fulfilment of which God alone could take cognizance, mixed with those which were to be executed by the judges; duties which were to be enforced by the judges with those which could only be recommended, and then left to every one's own feeling and conscience. The student of the laws of Moses will supply illustrations of these principles for himself. Since Moses mixes up particular precepts which are in some respects very dissimilar, it is not to be wondered at if, in some cases, a catalogue of them should be headed by a rule which is connected with only a part of them. These remarks are given to be followed out by any who may be so inclined; but if they should be found unsupported by facts, that will not decide against us the principal question at issue. Take only one instance, now, of the mixture of

laws which has been noticed; the 21st verse relates to idolatry and profanity, and those before and after it to impurity. Our opponents have not only to maintain that a man's wife's mother and daughter, &c., are the remainder of his flesh in the intention of the legislator, but that several others who are not of his blood, and are not specified in the law, are also included in his intention. Moses has laid down a rule, and followed it with some prohibitions which belong to it as strictly interpreted, and has united with them others which the rule so interpreted cannot include. Some commentators add to these latter a few which they think Moses might have added with equal propriety. To some, this looks more like teaching Moses what to say than explaining what he has said; but let this pass until we come to a more proper place for inquiring into it. If the 18th verse of this chapter is one of the specifications under the sixth, the present translation must be retained; for it cannot be supposed that Moses said, "Thou shalt not approach unto any that is near of kin," and meant by the man's near of kin all the women in the world, except his wife; but those who contend for the new translation, do not include the 18th verse among the specifications under the sixth verse.

Some appear to understand the 6th verse as looking forward over a forbidden territory, over which the 24th and following verses look backward, and which is thus guarded on both sides by the flaming sword of the Almighty. They do not consider the 6th verse as including all the specifications onward to the 24th; but when interpreting the warnings and threatenings in that and the fol-

lowing verses, they make them respond to that verse by denouncing and threatening all which it forbids. But as it is certain that the specifications under the 6th verse do not extend beyond the 18th, if they include it, there is a new subject introduced before these threatenings are introduced, and which subject consists of some of the most abominable crimes which the licentious passions of men, even when stimulated and debased by Pagan idolatry, have ever produced. For these the lands to use the strong language of Scripture, "vomited out their inhabitants." Here arises the question how far back this reference extends. In Justice Vaughan's Reports, p. 236, which are distinguished by uncommon ability and research, he contends that the abominations for which the lands are said to have vomited out their inhabitants are those mentioned in the verses immediately preceding, viz., adultery, human sacrifices, sodomy and bestiality; and also incest with a mother, with a father's wife, and with a maternal sister. He observes of some of the sins forbidden after the 6th verse, that, instead of their being the sins which distinguished the devoted Canaanites, they might rather be called the sins of the patriarchs, who lived in them till death made separations, and yet were eminently favoured by the Lord. If we say that all which is forbidden in this chapter belongs to the catalogue of sins for which the heathen were destroyed, we shall reverse the order stated by the Saviour, "That where much is given, much shall be required," we shall represent the Canaanites as vomited out of their land for the same conduct with which the less benighted patriarchs were chargeable even at the time when they re-

ceived the promise of that land. Abraham, perhaps, married his half-sister Sarah when they were both idolaters; but, without being required to separate, they lived together about sixty years after they became worshippers of the true God, and during that time they had tokens of the divine favour above all who dwelt on the earth. Jacob was married to two sisters at the same time, and Moses and Aaron were the immediate offspring of a marriage between an aunt and her nephew.

Granting that these marriages were things which in those times God winked at, but did not approve, must we believe that, because the Canaanites married their deceased wive's sisters, as Dr. Livingston and others allege, their land was to cast them out, and was made over by a gracious covenant to a man who was living in marriage with his own sister; and that covenant renewed with another patriarch who was living with two sisters at once; and that those favoured men, after receiving the promise, continued to live in that same connexion until separation by death?

We consider all the prohibitions in these verses to be addressed to the man; but it is evident that, by fair implication, they convey a prohibition to the woman likewise, since, if she was so free as to have any power to avoid the sins there forbidden, she must have been a participator in the crime if committed. The 7th verse, which forbids uncovering the nakedness of the father, seems to be addressed to the daughter; but translated, as by Michaelis, Professor Bush, and others, "The nakedness of thy father, even the nakedness of thy mother, shall thou not uncover," it is a precept addressed to the man, forbidding him to disgrace

his father by intercourse with his wife, as Reuben, the son of Jacob, had done. The man had much greater need of particular directions than the woman, for various reasons; he might have at the same time several wives divorced, and have several with whom he lived; divorce for slight causes and polygamy being both tolerated by the Mosaic law, though not approved. But it does not appear that the woman had such facilities for divorcing her husband; neither could she have a second while the first had not died nor put her away. Farther, the man had a legal right to contract marriage, but the woman must wait till she was given in marriage by her parents; and if, being married, she proved unfaithful to her one husband, she was to be stoned to death. The man by his marriages had been brought into far more relationships than the woman by hers, since she could have only one husband at the same time; yet she might be brought into as many by the marriages of her friends.

The following Table will present at one view the prohibitions both express and implied:

The persons whom the man is expressly forbidden to approach.	*The persons whom the woman is implicitly forbidden to approach.*
verses.	
7. Mother. - - -	Son.
8. Father's wife. -	Husband's son.
9, 11. Sisters. - - -	Brothers.
10. Grand-daughters by daughter and son.	Grandfathers, paternal and maternal.
12, 13. Aunts, paternal and maternal.	Nephews by brother and sister.

14.	Paternal uncle's wife.	Husband's brother's son.
15.	Son's wife. - - -	Husband's father.
16.	Brother's wife. -	Husband's brother.
17.	Wife's mother. - -	Daughter's husband.
—	Wife's daughter, and grand-daughters by son & daughter.	Mother's husband, father, and grandfathers, paternal and maternal.
—	Daughter of his wife by himself.	Father, (not step-father.)

It will be observed that any express prohibition on the left column, and the corresponding implicit prohibition opposite, in the right column, relate to the same act. The wife's daughter may be her daughter by her present husband or by another, but in neither case could the man approach to her, as described, without violating the precept in verse 17.

The Mosaic table is so important in this argument, and such mistakes have been made in respect of it, that it seems expedient to give it in another form, and then to follow it up with two tables which are more accordant with the 24th Article in our standards, but not with the Bible.

MOSAIC TABLE OF PROHIBITIONS.

Relations by Consanguinity whom a Man may not approach to uncover.

Lev. 18 : 7	Mother, - - - - - -	1
18 : 9, 11	Sisters, full and half-blood, paternal and maternal,	3
18 : 17	Daughter, - - - - -	1

18 : 10	Grand-daughters by Son and Daughter, - - -	2	
18 : 12, 13	Aunts, paternal and maternal, - - - - - -	2	
			9 9

Relations to his Wife to whom a Man is forbidden to approach.

Lev. 18 : 17; 20 : 14	Mother, - - - -	1	
18 : 17	Daughter, - - - -	1	
18 : 17	Grand-daughters by Son and Daughter,	2	
			4 4

Females whom a Man is forbidden to approach, on account of their marriage to his male relations.

Lev. 18 : 8	Father's Wife, - - - - -	1	
18 : 14	Paternal Uncle's Wife, - -	1	
18 : 16	Brother's Wife, - - - - -	1	
18 : 15	Son's Wife, - - - - - -	1	
			4 4
			17

If the wife's mother is not included in the prohibitions, they amount to only sixteen ; but if the subject in Lev. 18 : 17 is the same as in Lev. 20 : 14, she cannot be excluded. If the wife's grandmother is included in Lev. 18 : 17, the Mosaic prohibitions amount to the number of eighteen. But whether she is included or not, is of very little consequence in this argument.

BISHOP PARKER'S TABLE.

A Table of Kindred and Affinity, wherein whosoever are related are forbidden, in Scripture and our laws, to marry together.

A man may not marry his	A woman may not marry her
1. Grandmother.	1. Grandfather.
2. Grandfather's Wife.	2. Grandmother's Husband.
3. Wife's Grandmother.	3. Husband's Grandfather.
4. Father's Sister.	4. Father's Brother.
5. Mother's Sister.	5. Mother's Brother.
6. Father's Brother's Wife.	6. Father's Sister's Husband.
7. Mother's Brother's Wife.	7. Mother's Sister's Husband.
8. Wife's Father's Sister.	8. Husband's Father's Brother.
9. Wife's Mother's Sister.	9. Husband's Mother's Brother.
10. Mother.	10. Father.
11. Father's Wife.	11. Mother's Husband.
12. Wife's Mother.	12. Husband's Father.
13. Daughter.	13 Son.
14. Wife's Daughter,	14. Husband's Son.
15. Son's Wife.	15. Daughter's Husband.
16. Sister.	16. Brother.
17. Wife's Sister.	17. Husband's Brother.
18. Brother's Wife.	18. Sister's Husband.
19. Son's Daughter.	19. Son's Son.
20. Daughter's Daughter.	20. Daughter's Son.

21. Son's Son's Wife.	21. Son's Daughter's Husband.
22. Daughter's Son's Wife.	22. Daughter's Daughter's Husband.
23. Wife's Son's Daughter.	23. Husband's Son's Son.
24. Wife's Daughter's Daughter.	24. Husband's Daughter's Son.
25. Brother's Daughter.	25. Brother's Son.
26. Sister's Daughter.	26. Sister's Son.
27. Brother's Son's Wife.	27. Brother's Daughter's Husband.
28. Sister's Son's Wife.	28. Sister's Daughter's Husband.
29. Wife's Brother's Daughter.	29. Husband's Brother's Son.
30. Wife's Sister's Daughter.	30. Husband's Sister's Son.

Though it be not physically true that children have the blood of their parents, yet the fiction is harmless, and very convenient. In calculating degrees of consanguinity, we go back to the common ancestors of the parties whose consanguinity is to be ascertained, and find what proportion of their blood flows from that common source, and how much of it is composed of foreign admixtures. On this principle, children of the same parents are considered as the same blood; and cousins as having half their blood, the same. In a marriage between those who are more remotely related than cousins, the blood of the parties is derived from four grandfathers and four grandmothers; and in a marriage of cousins it is from three of each.

If two brothers marry two sisters, and the son by the one marriage marry to the daughter by the other, their blood is from four grand-parents, and not from six, as in the case of other cousins. If the parents were cousins, the two grandfathers and grandmothers were very closely related; and yet this marriage would not be contrary to our civil or ecclesiastical laws. In the marriage of half-brother and half-sister, like that of Abraham and Sarah, their blood is from six grand-parents, as in the case of cousins. In the one case the parties are a generation nearer their common source than in the other, but the amount of foreign admixture is the same. A man and the half-sister of his father are the same blood to the amount of one-half, like cousins; and so of his mother's half-sister, and his own half-brother's and half-sister's daughters.

As a man's mother and her sister are the same blood, that marriage to the former would be worse than to the latter, is owing to something else than consanguinity. Into that matter we need not stop to inquire. The common sentiment of mankind is, that marriage to a relation in the direct line ascending or descending, would be worse than marriage to a relation at the same distance in the collateral line.

Moses forbids a certain species of intercourse between brother and sister of the half-blood. Parker, in his table, takes no notice of half-blood; probably because it had nothing to do with the question of the legitimacy of Queen Elizabeth. If Prince Arthur had been the half-brother of Henry VIII., no doubt the bishop's table would have been longer, and still resting ostensibly on

the authority of Moses. On the principle, that what Moses forbids in one case we must forbid in all others like it, Parker's table is certainly quite defective.

The following table is designed to exhibit the minuteness of the Mosaic one in the case of the sisters, united with the comprehensiveness of the rule, "That a man may not marry any of his own relations nearer than cousins, nor any of his wife's relations nearer than he might of his own. And the woman may not marry any of her relations nearer than cousins, nor any of her husband's nearer than she might of her own."

TABLE.

A Table of Kindred and Affinity, wherein whosoever are related are forbidden, by an article in the Confession of Faith, to marry together.

A man may not marry any female in the following relations, nor a woman any man in the corresponding relations:

Grandmothers, paternal and maternal,	2
Mother,	1
Aunts, paternal and maternal,	2
Daughter,	1
Sister,	1
Sister's half-blood, paternal and maternal,	2
Nieces by brother and sister,	2
Grand-daughters by son and daughter,	2
	13

Females related to the man by consanguinity,	13
Females related to the wife in the same degrees,	13
Wives of men related to the man in the same degrees,	13
Females whom the man may not marry,	39
Men in the corresponding relations, whom a woman may not marry,	39
Males and females in the forbidden degrees,	78

By uncovering of nakedness in this passage, we understand acts of impurity between the sexes, which might be adultery, fornication, or unchaste exposures and familiarities. A question arises, whether marriage is the subject in these statutes? but from the turn which the marriage question has taken in the course of discussion through the press, it seems necessary first to consider whether a law against incestuous marriage is so indispensable that the existence of it in the Scripture may be presumed from their sufficiency as a rule of duty.

It is considered by many as evident that the Bible must contain a law of incest, or against incestuous marriages. This alleged necessity has guided some in their investigation of the laws of Moses. "We ought not," says the Repertory, "to approach the investigation of Scripture on this subject as if we were searching for something which ought not to be there." That is true; but let us also beware of a presumption on the other side, equally unfavourable to candour. In an eloquent speech reported by the orator himself in the

Presbyterian of 9th July, 1842, he reasons from the state in which we would be left without a law of marriage. And here we must protest against the use of the words "Law of Marriage," as synonymous with the words "law of incest." If a law of marriage be necessary, we have it independently of the 18th and 20th of Leviticus, though we do not deny that in some verses they recognise it. It is expressed in the beginning of Genesis; it is implied in the 7th Commandment, and in all the prohibitions of adultery scattered over the sacred pages, since, without marriage, that crime, in the strictest sense of the word, would be impossible. It is also recognised in all the directions given to husbands and wives. The orator's argument requires him to prove the existence in the Bible of a law of incest, which many Christians doubt, and some of them deny; instead of which, he proves what all Christians believe, that there is in the Bible a law of marriage. That point being settled, the argument proceeds as if the existence of an incest law in the Bible were fully established. Dr. Livingston has avoided that mistake. "There must," he says, "be a law somewhere in the Mosaic code, to ascertain who may and who may not be united in marriage." It is remarkable in connexion with these views, that we never need to infer from their necessity the existence of laws in the Bible against theft or perjury, which some think not worse than incest. We find them laid down so plain, that the fact of there being in the book has never been questioned by Christian or Infidel. If there is in the Bible a law of incest, we surely may find it as we find

laws against other sins. It is very unsafe to assume a principle, and then go to the Bible for proof of it; for in that case the text of Scripture can scarcely receive a candid examination. If, for instance, we go to the Scriptures with a full conviction that they must condemn slavery, and the use of fermented wine in the communion, we are in great danger of perverting them. We complain of Unitarians and Universalists for searching the Scriptures with the impression that certain principles which they have imbibed must be found there; let us avoid the same unsafe kind of reasoning, even though in behalf of what we know to be true. We quote with full approbation the following sentence from Dr. Breckenridge: "It is impossible, I think, for the candid reader of the Bible to deny that it is full of passages wholly incapable of being understood, except upon the distinct admission, that it contains a clear, full, and explicit declaration of God's will in regard to the solemn contract of marriage." (*Presbyterian*, 9th of August, 1842.) That is a good argument for a law of marriage, but not for a law of incest. We are not aware of any passages which can be explained by the admission of an incest law, and not without it; but if such passages can be produced, they will form an argument well deserving of attention.

It is happy for us that God has not left us to infer the existence of divine precepts from their necessity, nor to infer what the Bible teaches, from what it ought to teach. There is great uncertainty in reasoning *a priori*, or from what should be to what is. Such reasoning gives the fullest scope to the fallibility of man. He finds nothing to show

that the foundation of his airy fabric is not solid, and so continues to build on it confidently. By reasoning *a priori*, a man may build castles in the air, and admire their gorgeous appearance all his life, since, having no solidity, they are not subject to the laws of gravitation. In reasoning from facts or from revealed truths, we are not infallible; but we have means of correcting our mistakes, and by which the most of them may be corrected, if we are duly careful.

"The mode of preaching which we condemn," says a sensible writer in the Intelligencer of Aug. 27, 1842, "is that adopted by all heretics, and is the fruitful source of nearly all the false doctrines in the world." If we would draw an inference from necessity in favour of an incest law, it would be a law against incestuous adultery and fornication, for of those there have been many instances; but of marriages between parents and children or brothers and sisters there have been very few. The crime of marrying one's father's wife was not so much as named among the Gentiles; but the crime of uncleanness with a father's wife or concubine was committed in the family of Jacob, of David, and no doubt many others."

Let us now take notice of the evidence adduced to prove that a law of incest is necessary. Dr. Livingston tells us (p. 35) that "God forbids incest, and has mercifully implanted in the human heart an abhorrence of this crime, and thereby banished every sexual propensity to those who are near of kin." Incest is condemned by the whole world; the estimate of its criminality appears to be dependent upon custom, education, or profession. The

abhorrence of it is felt in all nations, among every civilized people, and even among barbarians. In showing the necessity of an incest law in the Bible, the Doctor, and others on the same side, tell us how well the heathen did without it. And then they would have us to know that if our Bibles had not an incest law, we would do worse than the heathen. That is, that if the 18th and 20th of Leviticus do not contain a law of incest, we are something the worse in respect of marriage regulations for having the Scriptures. Our missionaries sometimes deal out the Scriptures by parts ; but if the argument we have noticed is good, they should always begin with those chapters in Leviticus, lest, by reading other parts first—as, for example, the New Testament—they should lose their virtuous abhorrence of incest. It is said that there is a general abhorrence of sexual intercourse between near relations diffused among mankind, which is of great use, and which it is well to have strengthened by law. That is all true ; but the abhorrence does not reach to all the cases which some consider incestuous ; for example, the abhorence of marriage to a sister-in-law, or the niece of a former wife, is neither general among heathen nor Christians. It is not wonderful that, when the papal doctrines were driven from a part of Christendom, certain popish feelings and sentiments should linger behind. It does not appear that any injustice will be done to the argument of some writers on this question by stating it as follows : "The heathen, with a few exceptions, abhorred the marriage of parents to their children, and even of brothers to their maternal sisters, which marriages are incestuous ; but the marriage of a man to his

sister-in-law, or the niece of his former wife, is incestuous; therefore the heathen must have certainly abhorred that. The word *incest* is made to signify so many things, that it gives great facility for sophistry, and some have used that slippery article quite freely; of which their argument against marriage to a sister-in-law, taken from the natural abhorrence of incest, is an example.

It is said that there must be a law against a man marrying his own daughter; that, if incest be a transgression, there must be a principle to which it refers: there must be a law which fixes the standard and designates the crime; for, "where no law is, there is no transgression." Observe, it is not said that, where there is no written or revealed law, there is no transgression. But, indeed, those on the other side are forward enough to tell us that the Canaanites, who were without such law, procured their own destruction by transgression. A positive revealed law was not essentially necessary to make the marriage of father and daughter a sin. It is urged upon us that the marriages in question were sins among those who had not the Scriptures; and yet the question is put, "can a thing be sinful, and not forbidden?" If the question is, whether a thing can be sinful without being forbidden by revelation? those who put the question have answered it negatively. It would not be worth while to inquire whether a man is forbidden in the Bible to marry his own daughter, were it not that, from the answer that is given to it, some expect to draw very important inferences bearing on the more important question, whether he may marry his wife's sister? That we may innocently do anything which the Bible does not

forbid, is true in one sense, but not in another. It is true, inasmuch as the Scriptures teach us to respect the better feelings of nature, and to do only such things as are comely and fit; but it is not true that we may do whatsoever they do not forbid by statute law, like that in the 18th chapter of Leviticus. A thing may be sinful without being forbidden in that way, otherwise the heathen could not sin at all. If the Scriptures did not notice the marriage of a man with his daughter, it would not follow that such a marriage would be right. It is an outrage on the better feelings of nature which exist among the heathen, and which are greatly improved under the light of revelation. It will be shown, in its proper place, that if marriage is the subject in the 18th of Leviticus, it is forbidden between father and daughter by a positive statute. Would it not be wrong for a man to marry his great grandmother, or to marry any woman that is fifty years older than himself; and yet we find no law of Moses against it, even if we adopt our opponents' view of the Levitical prohibitions; namely, that they forbid, by parity of reason, everything which is like what they forbid expressly. Our idea of the completeness of the Bible as a rule of duty, does not involve the necessity of a particular precept forbidding, either expressly or by parity of reason, every sinful act; but it certainly contains principles which are opposed to all sin, otherwise it would not be a perfect rule.

That individuals in heathen nations were guilty of incestuous marriage, is certain; but it is not certain that it ever ceased to have public opinion against it, and was practised extensively, so as to be a national sin, like incestuous fornication and

adultery, which prevailed to an awful extent. The heathen are responsible for incest without any divine statute against it; and so would Christians, under the "light and saving health" of Christianity, even if they had no positive law against it. It is by no means clear that the completeness of the Bible, as a rule, involves the necessity of a law against incestuous marriages. The form of government is a matter which affects mankind at large, and is connected with important duties; yet the Scriptures never told any people, except the Jews, what form of government they should have. The Scriptures do contain a marriage law and an incest law; but that they contain a law showing who may contract marriages together and who may not, is not evident; neither does it seem more necessary than a law to fix a definite form of government. "It is not," says the London Eclectic Reviewer for January, 1841—"it is not evident, *a priori*, that we need any law to show us who may and who may not contract marriages; and it is certain that, to come to the investigation of a passage of Scripture with the presumption that a certain doctrine or law must be found in it, is very unfavourable to the candid searching of the Scriptures." It will be remembered that in the speeches in the General Assembly much use was made of the supposed necessity of an incest marriage law, and perhaps that supposed necessity had more influence than anything else, except the Confession of Faith.

It is necessary now to inquire, and, if possible, without a presumption on either side, whether marriage is the subject in the 18th chapter of Leviticus, from the 7th to the 17th verse. Those on the other side in this argument say that, "if

these statutes do not relate to marriage, they are useless, because adultery and fornication are forbidden before." Might they not as well say that all the prohibitions in the 7th and following verses respecting the near of kin, are useless because they are only prohibitions of what was forbidden in the 6th verse? The general prohibitions do not render special and particular ones improper. Idolatry is forbidden again and again, sometimes with greater particularity, and sometimes with less. In one passage we may find a cluster of precepts forbidding that sin, and some of them just the same that are found elsewhere in a different connexion. If any reader doubts whether Moses uses repititions, let him just read over a few chapters of his law with the view of ascertaining the fact.

It is said, too, that if those relationships made fornication more aggravated, they must have made marriage improper. This conclusion is by no means self-evident, and we know not where to find proof of it. There can be no reasonable doubt that the act which has been mentioned admits, like others, sins of indefinite degrees of aggravation, and that, too, independently of restrictions on marriage. If a man were to violate his cousin, in whose family he had long been on terms of confidential intimacy, surely his iniquity would be aggravated by those circumstances; and yet marriage between them would not have been improper. According to the sentiment of our opponents, if marriage between cousins whose parents are on habits of close intimacy, would be lawful, criminal intercourse between them without marriage would be no worse than between

strangers. But this it is hard to believe. And yet the aggravated nature of those acts of impurity which Moses specifies, does not seem to be the only reason why he made them the subject of special prohibitions. It would seem that the greater temptations arising from facility of intercourse was taken into consideration.

By uncovering of nakedness we understand acts of impurity between the sexes, which may be fornication, or unchaste exposures and indelicate familiarities. It is well known that Moses uses the term marriage in his laws; and that he never uses it from the 6th to the 17th verse of the chapter, may raise a reasonable doubt whether it is the subject there. Figurative language must be used very sparingly in statute law; and yet, if marriage is the subject in those verses, it is never literally expressed at all. In the 18th verse, where it is the subject, to marry is expressed by the words "take a wife," not by the words now under consideration. In those eleven verses of prohibitions Moses has not only avoided the word "marry" and the synonymous words "take to wife," but he uses a phrase which signifies marriage in no other part of the Bible. To use such a phrase to signify "marriage" is not to use that plainness and precision which we expect in positive laws, those of Moses not excepted. Farther still, the words *to marry* and *marriage* in the figurative language of Scripture are always used in a good sense; but the phrase in those verses, when figurative, is always used in a bad sense. But may not the act expressed by this phrase be connected with marriage? It may, just as adultery will be connected with it if the man who has

taken his neighbour's wife, should begin the cohabitation, which is very improbable, by the regular forms of marriage. In that case the marriage would not make the cohabitation to be anything less than adultery: but we should think him a poor philologist who should tell us that the word adultery in some cases signified marriage. The crime forbidden in these verses might be committed under the desecrated form of marriage; but it does not follow that the words "uncovering of nakedness," any more than the term adultery, ever signify marriage. We never speak of the 7th Commandment as a prohibition of marriage; but we know that a man would break that commandment if he were to marry his neghbour's wife: and so, without admitting that the phrase under consideration signifies marriage, we grant that the crime forbidden in those words might be perpetrated by an adulterous marriage. But there is very little probability that the man who goes off with his neighbour's wife will have any desire for marriage with her.

From comparing the passage from the 6th to the 18th verse of this chapter with the parallel passages in the 20th chapter, it would appear that adultery is not included among the sins forbidden in these verses. If we were to regard these prohibitions as addressed to the people individually, but not designed to come under the cognizance of the magistrate, we might believe that God would warn them of visitations in his providence, which would overtake them in cases where their crimes might be concealed so that they could not be punished by the court; but they appear to be given to the rulers in their public

capacity as well as to the people at large; and we admit that, if the approaching to the wife of an uncle or a brother meant adultery, as the term was understood in the law, the punishment for it was death—which is not the punishment denounced in the 20th chapter. This may be more particularly considered in our next inquiry, which is, whether the term wife in those verses signifies widow.

If this question were to be settled by the weight of great names, it might be difficult to say which side had the preponderance. "Throughout the whole Mosaic law," says Michaelis, "the widow is denominated wife." That is all which this eminent man has on the subject, and it is very far from showing the patient research and accuracy by which he is almost invariably distinguished. We quote the following from the New England Puritan, whose remarks on the marriage question are valuable, and cannot fail to have influence with their readers, notwithstanding the attempts of some writers on the other side to depreciate them: "It will be found," says Mr. Cook, (page 16,) "that the Scriptures in comparatively few instances use *wife* where widow is meant; and in those few cases there is something in the connexion which requires a departure from the common use. All the instances of this departure which we have been able to find by the help of two of the most distinguished writers on the other side, are the following: Gen. 38: 8: 'Go in unto thy brother's wife, and marry her, and raise up seed unto thy brother.' Deut. 25: 5: 'If brethren dwell together, and one of them die, and have no child, the wife of the dead shall not

marry without unto a strange.' Ruth 4 : 5 : 'Thou shalt buy it also of Ruth, the Moabitess, the wife of the dead ;' and verse 10 : 'Moreover, Ruth, the Moabitess, the wife of Mahlon, have I purchased to be my wife.' 2 Sam. 12 : 10 : 'Thou hast taken his (Uriah's) wife to be thy wife.' Matt. 22 : 25 : 'The first died and left his wife.' Acts 5 : 7 : 'His (Anania's) wife, not knowing what was done, came in.'

"Here we have seven cases alleged, in which wife means widow, to offset against forty-nine where the proper term is used. But these cases are exceptions made for obvious reasons apparent in the text. One of them speaks of a man having died and left his wife. There it would have been either a solecism or a pleonasm to have said he died and left his widow, since the term widow itself imports one left. And all but two of these cases refer to brothers commanded to take the wife of a brother deceased, and rear a family distinct from his own for that brother, to bear up his name and retain his inheritance in the land. In such cases the widow was reckoned to be still the wife of her first husband in a sense different from other widows. And while she was rearing a family to his name and inheritance, she was still, in a sense, fulfilling the duties and destinies of a wife. For this reason we have the phrase, 'wife of the dead ;' and for this reason in these, and it may be in other like cases, the widow is still called his wife. But no such reason is pretended to exist in the texts under dispute." Only two of the instances given above are from the writings of Moses ; and his use of words cannot well

be learned from the use of them by writers hundreds of years after him.

After a few more pertinent remarks, the writer says: "We are left, then, in the conclusion, that the use of the word 'widow' is not departed from in any case where a manifest reason for saying wife instead of widow does not appear in the case itself. Then the inquiry arises, is there a reason in the texts in question why the writer should not have used the term widow if he meant widow? If any assume that there has been such a substitution of terms, they are bound to show that there was occasion for it."

"Again, there are instances in this very series, in Leviticus 18, wherein the term wife must mean wife, and not widow. In verse 20 a man is forbidden to have connexion with his neighbour's wife; and the phrase occurs in the same series with 'brother's wife,' verse 16. Now, how shall we read it—that no man may marry his neighbour's widow? That will not be pretended."

According to a member of the last General Assembly, who gave us his views through the press a few months after, "the widow is called wife wherever she is mentioned in connexion with her deceased husband." (Lawful Degrees, &c., page 44.) If this were true, it would easily be accounted for, since the fact of her widowhood appears from the connexion, and the term wife, therefore, cannot mislead us; but if he could give an instance of the one term used for the other, where we have to search about and find by inference that the husband was dead, it would seem more to his purpose. It would be more satisfac-

tory too, if found anywhere else than in statute law, where definiteness in the use of language is more especially to be expected. But the plural word is as good an illustration here as the singular; and women are called *widows* in the same sentences which inform us of the death of their husbands. Take the following passages: Job 27: 15: "He shall be buried in death, an dhis widows shall not weep." Psalms 78: 64: "Their priests fell by the sword, and their widows made no lamentation." In these passages the term widows is not used from necessity, for the term wives would convey the same idea: and they show that it would not be contrary to all Scripture usage to call a woman a widow in the same sentence which shows that her husband is dead.

An argument relied on by our opponents, from Dr. Livingston downward, to prove that widows are meant in this passage, is, that otherwise it would forbid adultery which was forbidden before. (Page 84.) True, it was forbidden before, and so were the marriages they contend against, if they were forbidden, as they say, by the seventh Commandment. Consistency requires them to draw the inference, that incestuous marriages cannot be the subject in these verses, because they had been previously forbidden. But it is not uncommon with Moses, and, perhaps, would not with any ancient legislator, to forbid a class of sins, and afterward to forbid some of the worst of them, or those to which there might be the greatest temptation. Some ridicule this view by supposing a legislator to enact "that he who steals the horse of any person, shall be imprisoned three years. He who steals his *father's* horse, shall be

imprisoned three years. He who steals his *brother's* horse, shall be imprisoned three years." These repetitions are ridiculous only because the crimes in the repetition do not stand out prominent, as being aggravated above other acts of horse-stealing; or, if they do, the supposition artfully veils that fact by annexing to them all the same penalty. This one thing is certain, that either these severe rules against repetition must be rejected, or the character of Moses as a legislator must go down. In the 20th of Exodus he gives the Commandment, "Thou shalt not steal;" and in Leviticus 19: 11, "Ye shall not steal; neither deal falsely, nor lie one to another;" the first being a command to every man not to steal from any one, and the next a command to the Jews not to steal from one another. In Leviticus 23: 11 we have the words, "The innocent and righteous slay thou not," a crime previously forbidden in the sixth Commandment. But such repetitions in the laws of Moses are very numerous.

The arguments to prove that the term wife must signify widow in these Mosaic statutes, taken from the use of the words in other passages, and from the alleged impropriety of admitting that they contain repetitions, seem to be of no force; but the same cannot be affirmed of the penalties in the twentieth chapter. The 11th verse reads thus: "And the man that lieth with his father's wife, hath uncovered his father's nakedness: both of them shall surely be put to death: their blood shall be upon them." The penalty here does not prove that the wife supposed was a widow, for the penalty could be no greater in a case like that of

Reuben, which, probably, the legislator had in his mind. There might be some danger that the Children of Israel, and especially the tribe of Reuben, would think too lightly of that species of adultery, since the father of the tribe had committed it, and was punished only by a prophetic reproof from his dying father; the fulfilment of which, though realized in the tribe, many of them might fail to trace back to the patriarchal transgression, just as many people fail to trace back the sin and suffering in the world to the first sin of Adam. The 14th verse reads: "And if a man take a wife and her mother, it is wickedness: they shall be burnt with fire, both he and they; that there be no wickedness among you." How came this verse to be overlooked, when some critics and commentators placed the marriage of a man to his daughter among the inferential prohibitions? If marriage is the subject here, the prohibition, under pain of burning, to marry one's daughter or step-daughter is as plain as words can make it; and no parity of reason, inference, or implication about it. As we never object to *inference*, except when it seems to be counterfeit, we shall draw one from the principle of eternal justice, which is, that, unless the man took the mother and daughter simultaneously, the first he took, if she never consented to his union with the second, but used all her influence against it, was not included in the punishment. As worse crimes are mentioned with less punishment than being burnt to death, in verses 11 and 17, from the general humanity of the laws of Moses, A. Clarke says, "it is necessary to limit the meaning of the words to branding." (See his note.) But whatever the penalty might

be, the words contain a direct prohibition to approach, as described, a daughter or step-daughter.

The 20th and 21st verses are as follows: "And if a man shall lie with his uncle's wife, he hath uncovered his uncle's nakedness: they shall bear their sin: they shall die childless. 21. And if a man shall take his brother's wife, it is an unclean thing: he hath uncovered his brother's nakedness: they shall die childless." According to Michaelis, (page 113,) this does not mean that God would, by a miracle, make all such marriages unfruitful, but only that the children should not be enrolled in the registers as the children of their natural father, but, in point of civil rights, be considered as belonging to the widow's deceased husband. The Prophet Jeremiah was commanded to prophesy against Coniah, the son of Jehoiakim, King of Judah. (Jer. 22: 30.) "Thus, saith the Lord, write ye this man childless, a man that shall not prosper in his days: for no man of his seed shall prosper sitting upon the throne of David, and ruling any more in Judah." Coniah was not literally childless; but if his children were not left without enrolment, they had no advantage from it, being excluded from their civil rights. Zedekiah, their father's brother, ascended the throne after their father, Coniah. It is evident that the exclusion of his children from enrolment and civil rights, as his heirs, was not the punishment for the man who took the lawful wife of his brother during that brother's life. The rulers were bound to punish adultery with death, and the connexion now mentioned would have been an aggravated case of it. The Saviour speaks of a man putting away his wife for fornication; but Mi-

chaelis has clearly proved that he did not speak of divorce by a legal process, but of putting away privately by a writing of divorce, as Joseph, his supposed father, once intended, and for which Moses had provided. (Michaelis on Divorce.) But if a Jew was brought before the court for having the lawful wife of his brother, still living, the punishment which the court must inflict, if they decided according to law, was not the exclusion of the children from enrolment as the heirs of their natural father, nor the divorce of the offenders, but stoning to death. All this does not set at rest the question, whether wife in this passage signifies widow, though it makes it certain that it does not mean a wife not put away from her husband, but recognised as his wife by the law of the land.

There seems to be just five interpretations which can be given of those verses. 1st, intercourse with the widow of an uncle or a brother; 2d, that adultery established by evidence, for which the congregation of Israel were bound to inflict the punishment of death; 3d, that same crime, but so concealed that man could not punish it; 4th, criminal intercourse with the concubine of an uncle or brother yet alive; and, 5th, the same crime with a woman divorced from an uncle or brother, but not married to another man, and who might possibly return.

The difficulties attending the first of these interpretations have been considered. The second is quite inadmissible, since, for the crime of adultery, when proved, the penalty was death. The third case, that of the same crime when not proved, God might, by a miracle, make that connexion always unfruitful, which, however, was very im-

probable; or, as the want of heirs was a reproach among the Jews, he might remind the intending transgressor that if he should have children in that way, they would not be his in law. In the list of prohibitions now under consideration, there are some offences which were to be punished by the Judges—which came under the criminal law: and if those were never mixed up in the law of Moses with offences which God alone could punish, the third interpretation would be untenable. But such intermixtures in that law are not uncommon. In respect of the fourth interpretation, we remark, that concubines were sometimes called wives by Moses when it was not necessary to speak of them in contradistinction to women that were wives in the proper sense of the word. In Gen 5: 1, we read that "Abraham took a wife, and her name was Keturah," and in the sixth verse Keturah and Hagar are called his concubines. Of the twelve patriarchs, four were the sons of concubines. Whether those females were recognised in law as wives in so far that the violation of them was a capital crime, it is perhaps difficult to determine. The case of Absalom makes it probable that they were not so accounted. By the advice of a sage politician, Absalom went in to his father's concubines in the sight of all Israel. If that had been a capital crime for five hundred years, the law would probably have formed against it such a public sentiment, even among the Jews, as Ahithophel would have expected to operate strongly against Absalom's cause if he should be guilty of it. Though concubines might not be honoured with the same legal protection against violation as wives, yet it may be that they were the wives

mentioned in Lev. 18: 14, 16, and Lev. 20: 20, 21. Perhaps this interpretation will meet with but little favour, and it is not given with much confidence; but the objections to it do not seem to be stronger than to the first one, namely, that wife in these verses means widow. In respect of the fifth interpretation—namely, that the wives of the uncle and brother with whom the Jew was forbidden to have intercourse, might be females whom they had divorced—let it be observed that, as concubines and widows were occasionally called wives, it can scarcely be doubted that the same appellation would sometimes be given to females who had been divorced. That they are the wives mentioned in the four verses just quoted, seems very probable, if those verses form any part of the criminal law, as they certainly appear to do. A Jew could not take a woman who was legally recognised as the wife of another, without running the awful risk of being stoned to death; but if he was not the high priest, Moses did not forbid him to take a woman that was divorced. It is easy to see that this general toleration might require some restrictions; for the confidence with which it is supposed a man was received into the family of his uncle and brother, whose wives were allowed to appear and converse with him unveiled, would give him an opportunity, if they were objects of his desire, to stir up jealousy, which would lead to a divorce, after which he might possess them without a violation of the law. It might be well on that account to cut off all such expectancy in respect of the wife of an uncle or a brother.

The two questions which have been discussed, namely, whether in the statutes under considera-

tion marriage is the subject, and whether in the same statutes the term *wife* means widow, are very closely connected; and it is not supposeable that any who answer the first in the negative will answer the other in the affirmative. The writer is not fully prepared to take his stand on either side. Whether, if he should take the negative side, he would be accused, as Mr. Cooke has been, unjustly, of setting himself against the world, is uncertain. But standing with Michael Weber, Rosenmuller, Sir William Jones, Brockholst, Livingston, Parsons, Cook, the London Eclectic Reviewer, and a number of orthodox brethren, whose opinion given in conversation agrees with that of the authors quoted—all believing that marriage is not the subject in these verses—he would feel that, if in a small minority, it would be a highly respectable one. He is satisfied, however, to take the ground that both the points discussed are so doubtful, and the fellowship of the church so important, that they ought not to be the basis of procedure for excluding a member from the church or a minister of the gospel from the duties of his office.

CHAPTER VI.

*Parity of Reason not admissible in Statute Law.**

Our next inquiry is, whether statute law may be applied constructively, or by parity of reason. All those laws of Moses which were to be acted on by the judges or elders of the people, formed the civil and criminal law of the land, and were a distinct department from the Levitical law, which was to be administered by the priest. In the law which related to suits between man and man, where criminality was not supposed, we do not deny that parity of reason must be resorted to; but with such laws the church has nothing to do as a judicatory. Who made us judges and dividers over the people? When a church member is brought before an ecclesiastical court under accusations, it is for something which that court regards as a crime, though, perhaps, it is not criminal by the law of the land. And we do not claim, like the church of Rome, a legislative power—a power to make what laws we please, and then proceed against people for disobedience to the church. Our powers are restricted to the administration of the laws of Jesus Christ, who is King in Zion. There is, therefore, an evi-

* The ground on which some marriages not specified by Moses, are held to be unlawful, is called by law authorities "Parity of reason." Our opponents call it implication. The former designation is correct: the latter is calculated to deceive.

dent analogy between our ecclesiastical judicatories and the criminal courts of Christian countries, though the difference between them in several respects may be great. The criminal courts of the more civilized and enlightened Christian nations have long abandoned the practice of finding people guilty by construction or parity of reason—it having been found, by sad experience, that constructive law was a very dangerous instrument in the hands of fallible man. The danger of injustice is not wholly removed, and cannot be so while erring mortals sit in judgment; but, by the rejection of constructive criminality, and confining them to specifications, that danger is greatly diminished. The question before us is, whether church courts, being all composed of fallible judges, ought to be confined, while they sit in judgment, to specifications in every case where the Lawgiver has given them; or may take the specifications as examples of the rule under which they are given, and so condemn their brethren for things which are not specified in the divine law. If a rule is given with nothing specified under it, the rule itself may be considered as a specification, and applied so far as it will properly extend; but where specifications are given, we believe they are limitations of the rule, and that, like judges in criminal courts, we should be satisfied to abide by them. From these remarks the reader may perceive what we intend to show, and also the bearing of this discussion on the disputed marriages, since it is only by parity of reason that they are pronounced to be contrary to the Mosaic law.

Before proceeding farther with the subject of parity of reason, it seems necessary to distinguish

it from things with which it has been confounded. Those who object to finding men guilty by parity of reason, have been strangely represented by the other side, as if they objected to the use of inference and implication, and even of reasoning altogether: yet, after reading all we could find on this subject, we have never found any such objection made. We are not aware of any who object to the explanation, by parity of reason, of moral precepts, of the transgression of which God alone and the offender's own conscience must judge. It is only the use of it when sitting in judgment on their fellow Christians, to which they object. Let us for a little consider the subject of parity of reason negatively.

First, to take words in their technical sense, or any sense which they properly bear, is not constructive reasoning. It is alleged that a Jewish court, acting under the law that "he that stealeth a man and selleth him, shall surely be put to death," could not punish for stealing and selling a woman, unless they applied the law by parity of reason. To this the answer is, that the use of words is altogether conventional: they mean just what the community please, who employ them; and if a writer uses a word in a sense which has not the sanction of usage, he is bound to define it for his readers; and especially so in positive law, where, to prevent mistakes, precision is indispensable. Again, observe that the same word is taken in various senses, all of them sanctioned by the usage of the language. The word *man* on this principle is sometimes used to express the idea of one of the human race, or all mankind; and the word gospel is used to express the glad tidings of salvation

exclusively of the law, or to express the idea of the religion of Jesus Christ, including all its precepts, promises, and narratives. All those meanings of these words have the sanction of usage: and where the words occur, there is little or no difficulty in finding the sense in which they are used. The same words which we employ in common discourse, are frequently used in science or art in a sense very different, but which has the authority of artists and men of science. This principle might be illustrated by the use of words in theology and in law. It is the last of those which is most to our purpose now.* The term *manslaughter* is used in law to signify the killing of a human being by culpable negligence. If the person so killed is a female, it is not necessary to resort to parity of reason to bring in the offender guilty; for the term itself, in the legal sense of it, and by the usage of writers who employ it, expresses his crime. Throughout the Scriptures the word man is used, where a distinction of sex is not considered to express a human being; and the word man-stealing to express the stealing of any of the human race. Even in the book of Genesis the word man is used by Moses for both Adam and Eve. If a Jew stole a female, his crime was expressed in the Mosaic law; and when he was brought in guilty, there was no more construction or parity of reason

* The term *bigamy*, which literally means having two wives, is used in law to express the crime of the man who has a plurality of wives, whatever may be their number, and likewise the crime of the woman who has two or more husbands. There is no inference necessary in any of those cases, for they are all included in the meaning of the word *bigamy*, as a term in law.

in the case, than if the person stolen had been of the other sex. An apology is due to the reader for dwelling so much on this argument, and it is that the argument, whatever he may think of it, is used against us by high authorities.

Secondly; searching out the spirit or design of a moral precept, and explaining and applying it accordingly, if it should be called construction, is not the construction of positive law. It is not the application of the precept in court, by parity of reason, to the condemnation of our neighbours. Our Saviour, with a wisdom and propriety which no Christian will call in question, said, "If any man will smite thee on the one cheek, turn to him the other also." In this precept we find the heavenly lesson, that we are not to disturb our own peace and the peace of society by retaliation for slight offences. God requires the obedience of the heart; but if from the heart we obey this precept, the same disposition will lead us to pass over other slight offences. But if Christ had said to the judges in the land, "If a man will complain to you that one smote him on the cheek, send him by your authority to turn the other to the smitter," he would have interfered with the civil power, and set himself directly against the law of God given by Moses. In all those cases where our responsibilities are directly to God, we must expect to be dealt with according to the spirit or principles of our conduct, and there will be no danger of injustice; but when God gives criminal statutes for men to decide by as the judges in the land, it is necessary, to prevent injustice, that they be confined to express law. It has been supposed that the precept, "Thou shalt not muzzle the

mouth of the ox that treadeth out the corn," must be construed in favour of the ass used in that work. If so light a creature was employed in that operation, probably the humane owner would construe the law in his favour ; and yet it is not certain that there would be parity of reason in the cases, for some animals suffer a great deal more from a few hours' want of food than others. It might be enough for the comfort of the one to be well fed before and after the yoke. But the principal question on the case is, whether the law respecting muzzling was intended to be enforced by the judges ; for if it was left altogether to the feeling and conscience of the owner, as accountable in that matter to God alone, it is not to our present purpose. The question is, whether the judges were to be intrusted with the application of criminal laws by parity of reason.

Thirdly ; implication is not parity of reason. We are understood by our opponents to object to implication, and to the teaching of anything from the Scriptures which they do not express—a thing which, so far as we know, none of us have so much as hinted. We admit, that all which the Scriptures teach by implication demands our faith and obedience, as well as what they express. But what is implication ? Let us take much higher authority than our own to answer this question. In Jacob's Law Dictionary it is defined and illustrated as follows : "Implication, a necessary inference of something not directly declared, arising from what is admitted or expressed. If a husband devises the goods in his house to his wife, and that, after her decease, her son shall have them and his house, though the house be not devised

to the wife by express words, yet it has been held that she hath an estate for life in it by implication, because no other person could then have it, the son and heir being excluded, who was to have nothing till after her decease." So much has lately been made of implication on the marriage question and some others, that a few more remarks on it may be useful. Let it be observed, then, that, when anything is forbidden expressly, all the acts which unavoidably lead to it are forbidden by implication ; but the implication does not extend to those acts which may or may not lead to the one which is expressly forbidden. Solomon's warning to avoid excess did not implicitly forbid all his courtiers to eat at his luxurious table ; but if there was one among them who could not avoid excess, the warning by fair implication forbade him to be there. We are commanded to avoid intemperance in drinking ; and this command has been held by some to forbid, by implication, the use of fermented wine at the communion table, because it is said that some reformed inebriates cannot taste nor smell it, without following it up with drunkenness when they leave the house of God. There seems to be no way of avoiding the implication but by denying that men so imperfectly reformed should come to that holy ordinance. Let us now take, for illustration, a law which expressly requires a certain duty to be done. That same law requires, by implication, all those acts without which the duty expressed can never be performed ; for a requisite result must require, by implication, all the necessary means. An expressly commanded duty must require implicitly those other duties, if there be such, without which it

cannot be discharged. And an express prohibition addressed to one person in respect of a crime which he cannot commit without the consent of another, must, by fair implication, forbid that consent. On this principle, a law forbidding a man to marry his sister implicitly forbids a woman to marry her brother.

An implication may be in the words expressed only, or as taken in connexion with some admission or principle. Thus, the implication, that a woman may not marry her brother raised on the command to the brother not to marry his sister, proceeds on the principle that she is a moral agent, and that she is free from compulsion in her marriage, which was not always the case with Jewish females. If the female was a bond-woman or slave, her case might be nearly the same as that of one who was violated by force, and the implication could not hold good in that case. This may be one reason why all the prohibitions we are considering were addressed to the man.

We admit implication ; but when we are told that on that principle a command not to marry a brother's widow must be a command not to marry a deceased wife's sister, we can perceive no implication in the case. Certainly the one marriage may take place without the other, and the law may authorize the one without authorizing the other. Hence, any legislator who meant to forbid them both, would use two prohibitions, and so set the matter at rest. It is contended that the prohibition in the words " none of you shall approach unto any that is near of kin to him " implies all such as have been mentioned. That implication can stand only on the assumption, that

Moses intended that the people should carry out his prohibitions to the same distance from the *prepositus* in all directions; a point which may be examined with more propriety in a subsequent chapter.

We, who take the positive side of the general question, have been accused of denying to those who take the other side, the right of drawing inferences from the Mosaic statutes. The writer has not found that any one has denied that right; but we object to some inferences, because we think they do not necessarily follow from what is expressed, and in particular we object to those inferences from positive laws which are really additions, and which serve all the purposes of *new* statutes. Whether the inferences drawn on the other side are additional statutes, may appear as we proceed farther with the subject.

Having noticed a few things which have been improperly called parity of reason, let us now consider what is this parity of reason or constructive reasoning. We use the phrases promiscuously, believing them to be so similar, if not in all cases alike, that in such usage there will be, in this discussion, no unfairness nor inconvenience. By construction we understand the meaning put on a passage, a document, or an act different from what is expressed or necessarily implied; or, in statute law, the application of a prohibition to cases which the Lawgiver has not expressed, but which seem to us to be similar to those which he has mentioned. Going on the constructive principle, we find something forbidden; we find, as we think, the reason why it is forbidden; we notice other things which, for the same reason, ought to

have been forbidden ; or rather we say the Lawgiver did forbid, though he did not express them. The following case may make this subject more clear: "The Rev. Thomas Magot, a beneficed clergyman of the church of England, left, by his will, £600 to Richard Baxter, to be distributed to sixty poor ejected ministers ; adding that he did it, not because they were non-conformists, but because they were poor." In those evil days Mr. Magot's act was construed to be no less than the aiding and abetting of treason, and, accordingly, by the decision of Judge Jeffries, the money was thrown into chancery. There was no treason intended by Mr. Magot, yet he was found, by construction, to have been an abettor of treason. No fair definition of treason or of non-conformity could implicate him in the alleged crime ; but by construction he was found to have been guilty of it. The construction does not seem to be quite so forced as that which forbids marriage to a sister-in-law, but it might be more pernicious. Is it said that Jeffries did not proceed on parity of reason, or that he abused the principle ? That he did a most cruel and wicked deed, is certain ; but that he perverted the principle, does not appear. The design or reason of the law was, to produce conformity to the worship and order of the church of England, as directed by an infamous court ; but the supporting of men who would not conform, had a tendency to prevent conformity. Those that framed the law probably had not thought of such a case as came afterward before Judge Jeffries ; and if they had, would, perhaps, have thought an act against that charity too unpopular to be passed even by them. But their design to crush non-conformity

was avowed, and with the same design Jeffries confiscated the money. He certainly had parity of reason to support his decision. The reformers of the criminal laws did not think it sufficient to make enactments against the abuse of the principle of construction, but they abolish the crime of constructive treason altogether—a noble deed, for which the following generations have blessed their memories. But have traitors been safe, or the crown less secure, since the crime of constructive treason was erased from the statutes? Certainly not.

The law which Jeffries applied constructively was a most unjust and cruel one; and might not the reformers of the law after his time, when they had treason laws, which were just and salutary, have left to the courts the power of applying them constructively? They judged otherwise, and their judgment has ever since been approved of. They saw clearly that, under the best treason law that could be framed, if they should be applied by parity of reason, good men and virtuous patriots would be insecure. The state of the statute laws, as we have them improved by our fathers, will be found in the following quotation from the "*Spirit of the Nineteenth Century*, (p. 370.) "When the legislature mention particular cases, the court never feel at liberty to add to, or include a case not described. If they suppose a case omitted merely because it did not occur to the mind at the time, their language is, '*voluit sed non dixit*,'—they have willed it, but not said it. But the 18th of Leviticus is not a writing of man. Shall we apply the phrase '*ineps concilii*' to a law of Jehovah? 'Ye shall not add to the word which I

command thee, neither shall thou diminish aught from it.'" It may be asked whether the Jewish courts were as liable as Christian courts to err in the construction of statutes? We see no reason to think they were less fallible, nor to believe that a principle of procedure, which has been found so dangerous in the hands of Christian judges, could have been less dangerous in theirs.

It may be well to relieve this discussion by a few cases, from which we may learn the fallacy of parity of reason by the conclusions to which it leads. Here let us not forget that well established rule, that "an argument which proves too much, proves nothing." Let us begin with the command to destroy the Canaanites for their wickedness: Applying it by parity of reason, the Jews would have felt themselves under an injunction to destroy any other people who were as wicked, if it should be in their power; which seems to be just the reasoning which Romish doctors draw from the Old Testament in support of slaying heretics. If we take the constructive principle to the sacraments of our holy religion; that is, if we look to their design to promote religious feeling and reverence; we may infer from it the duty of observing everything else which will promote that feeling; and so we might vindicate the additions made to those institutions by the church of Rome. It it true, that we may properly deny that those Romish additions are calculated to produce religious reverence; but we cannot deny that by erring men they are understood to produce it, nor that they are such as erring men would fall into, under the belief that they had a right to depart from God's express rules in positive institutions, and add to them others

which they thought would have the same tendency. This is not reasoning from the abuse of a thing in the bad sense of the words; but it is only reasoning from the difficulty and uncertainty in applying the principle of parity of reason and from the liability of man to err; that, if divine institutions are subjected to it, they will be loaded with superstitious rites; and that, if persons accused under divine prohibitions are subjected to it, they will often be condemned innocently. If the positive statutes in the Scriptures are to be generally interpreted by parity of reason, it is hard to say what they may not condemn or justify; by that principle of interpretation it may be made to appear that the 1st Commandment forbids murder, and the 6th idolatry. The process may be as follows: "A man who has reverence for God will not take the life of man, who is made after his image; therefore the command to worship God alone, forbids murder by parity of reason; for that, like idolatry, implies want of reverence for God: but as murder must always imply irreverence, therefore the sixth Commandment requires reverence—that preventive of the crime specified—and, therefore, by parity of reason, forbids idolatry." Or thus: "Idolatry leads to cruelty, and even to the destruction of life; therefore it must be the sin forbidden in the sixth Commandment." Some worthy men, by constructive argument, have found, as they thought, the whole moral law in the command respecting the tree of knowledge; so that Adam, by eating its fruit, broke all the ten Commandments. By the same kind of argument they might find in any one Commandment all the other nine, or as many of them as they pleased, and so prove that

only one was necessary. The constructive principle must have been used very freely by some preachers in former generations, who sent the bruit of their great talents around by preaching a whole year from one text. It is not understood that parity of reason can be excluded in interpreting moral precepts, because it has been carried out to the ridiculous. But in positive law it is unnecessary, and eminently dangerous. If constructive reasoning were expelled from positive laws both divine and human, systems of religious, moral, and political quackery would lose one of their strongest props, while the temple of truth and righteousness would stand on pillars which time cannot shake.

It is well known that a prohibition to marry a wife's sister can be made out from the law of Moses only by parity of reason; an instrument which, in positive laws, would do a great deal more work than those who use it wish for. When God judges, no doubt he proceeds according to the state of the heart; but when he gave statutes to men, by which they might try their fellows, we have no cause to doubt that he has carried them into detail so far as to remove all necessity for doubting whether the acts for which any are brought before them are contrary to his law. It is enough for us to judge whether evidence is conclusive, without being left to inquire whether the doubtful act is a crime. Michaelis when speaking of the rule, "that prohibitions are not to be extended beyond the letter of the law," acknowledges that this rule is not always safely applicable to very ancient laws, if we wish to ascertain the true meaning and opinion of the lawgivers.

Here it may be remarked that Michaelis, like other German commentators, treats Moses the same as any other ancient lawgiver. But when we take into account that Moses was inspired, and that, though after the settlement in Canaan, the Jewish laws received improvements by additions, yet none by any other alterations, we conclude that, as left by Moses, they would be free from that trait in other very ancient laws, which the experience of ages has now proved to have been a great defect. It is true, that he gave laws for the hardness of the heart—laws adapted to the state of a semi-barbarous people, which was no defect in his legislation for them; but laws given to men, which, in judging others, they must apply by parity of reason, would seem to be a great defect in any state of society.

It is contended that, unless the statutes in Leviticus are applied to more cases than they express, they must fail to forbid several marriages which are abhorrent to the feelings even of the heathen; such as marriage to one's mother or daughter. The sentiment which they notice as existing even among the heathen, will generally prevent impurity between parent and child; and when that impurity does occur, there will probably not be one case in a hundred in which it will be connected with a desire for marriage. A prohibition may be spared where there is no inclination to transgress; and who ever knew a man who desired marriage with his mother or daughter? That a very few of mankind have desired criminal intercourse with their parents or children, is true; but that is different from the desire of marriage with them. But if a positive law

against marriage between the father and daughter is necessary, we have it, if marriage is the subject here, in the words "Thou shalt not uncover the nakedness of a woman and her daughter;" which a man would certainly do, if he married either his daughter or step-daughter. No inference for the use of parity of reason can be drawn from this case. But it is said that, if nothing but the express prohibitions are contained in the passages under consideration, it would not be wrong for a man to marry his grandmother; and because nothing can be wrong which is not forbidden. The answer is, that, however wrong an action would be if done, we have no need for a law against it, if no man will ever be able to do it; and just as little, if no man will ever be inclined to do it. We are not forbidden to assassinate an angel; though that, if done, would be a great evil, for angels are not in the power of man; and, for as good a reason, we are not forbidden to marry our grandmother, because, however bad such an act would be, there is just as little danger that we will ever do it, as that we will commit the other great crime, which is nowhere forbidden. The one act is physically impossible, and the other morally, and neither of them is forbidden. But if some will still insist that we must go beyond the express prohibitions, and take the prohibited degrees as our rule of duty, in order to include all the marriages which would be wrong, whether they be possible or not, let them affirm that it would be right for a man to marry his great grandmother, who is certainly without their prohibited degrees. If two brothers marry two sisters, though they be their cousins, their children are without the degrees. The

grand-uncle and grand-niece have married together; and if he was fifteen years younger than his brother, her grandfather, and she thirty-five younger, the difference of their ages would be only twenty years. A marriage of that sort was tried in an English court, and found legal because it was not within the Levitical degrees. Whether those on the other side would think marriages right between those who are cousins, both by the father and mother's side, and between a man and his grand-niece, we cannot tell; but one between a man and his great grandmother they certainly would hold to be greatly wrong; and yet none of the three are contrary to the Mosaic laws, as interpreted by themselves. But if nothing can be wrong which the Scriptures do not forbid, as they affirm, the marrying of the great grandmother would be unobjectionable, except, like many other marriages not forbidden in Scripture, on the ground of common prudence or expediency. What, then, becomes of the argument for parity of reason, from the silence of Scripture respecting the case of the grandmother; and connected with it, the principle, that a marriage not forbidden in Scripture cannot be wrong.

The consequential marriages, as they are called by some writers on the subject, are the following;

1. With a brother's daughter.
2. With a sister's daughter.
3. With a maternal uncle's widow.
4. With a brother's son's widow.
5. With a sister's son's widow.
6. With a deceased wife's sister.

According to Bishop Parker and his followers,

the whole number of forbidden marriages is thirty, fifteen of which are expressed and fifteen constructive; but these it is now unnecessary to mention. If some marriages must be consequentially forbidden in these statutes, then parity of reason must be employed in explaining the statutes, and that principle they maintain will include the whole of their prohibitions; though that will not be easily proved. It is probable there is none of their prohibitions, on the necessity of which they will be more willing to found their argument in favour of consequential prohibitions, than that of the uncle and niece. If every marriage which is not forbidden in those verses would be right, it would follow of course that marriage between uncle and neice is proper, or that it is there forbidden. We cannot admit the premises. If we take for illustration a supposed marriage which never will take place, those on the other side have led us to it by doing the same. We affirm that marriage to one's great grandmother would be wrong, and that it is not forbidden. If we are right in those positions which it is supposed none will dispute, the rule, that "what is not forbidden must be right," requires some limitations. Let the rule be, that what is neither physically nor morally impossible, must be right, if not forbidden, and we accept of it; but it ruins the argument, from the silence of Moses respecting grandmothers. Marriage between an uncle and niece is either forbidden in Scripture, or it is lawful. It does not hold that, if not forbidden, it would not be inexpedient, any more than that it would not be inexpedient for a man to marry the same week on which he had buried his wife. There may be very strong moral consi-

derations against the union of uncle and niece, but the present question is, "was it forbidden in the law of Moses? If he intended to forbid it, his silence respecting it is a most wonderful circumstance; for his own mother was the aunt of his father; (see Exod. 2: 1; Num. 26: 59;) their marriage being that from which the prohibition of marriage between uncle and niece is inferred.

Some tell us that adultery and fornication cannot be the subject in those verses, because they do not mention all the cases of those crimes: and the monstrous implication would arise, that these acts would be allowed with all the females not specified in the passage. That implication might be fair in so far as positive law is concerned, if those acts were not forbidden in other passages; but let them try it with the marriages in question. They admit that they are forbidden in those passages, or not in the Bible; but why do they not apply the same logic, and infer that incestuous marriage is not the subject here, because the marriages which must be incestuous are not all mentioned? Or might they not say that "all the cases of impurity between persons related by affinity or consanguinity which are not specified here, are included by parity of reason; and the words '*neighbour's wife*' are sufficient to express all who are not so related?" It is difficult to see what more right we can have to stretch out prohibitions of marriage by parity of reason than prohibitions of impurity.

We come now to the question, supposing parity of reason to be admissible in the interpretation of some of the criminal laws of Moses, would

it be admissible in interpreting this passage? That it would not, appears, first, From the repetition of the specifications of the 18th chapter in the 19th chapter without variation. Second; From the minuteness of the specifications; and, third, From their being most minute where, if they were to be applied constructively, it would be least necessary. While entering on these subjects, let us notice a caution given from the other side, to "remember that these are the words of the Holy Ghost, and that we ought not to impeach his wisdom." It is hoped we shall remember that, but we may impeach the wisdom of their exposition; and, if our own shall be unreasonable, we do not expect that it will escape condemnation because it purports to be an explanation of the Scriptures. The words "this is my body" are from the Spirit, and yet we do not hesitate to say that transubstantiation is an absurdity. We expect divine statutes to be wiser than others, and dare not explain them in a way which would make Moses, if a mere human legislator, to be a very obscure one. This passage does not contain religious mysteries above, though not contrary to, reason, but rules by which men are to regulate their conduct, and by which, if in office, they shall judge their neighbours. An explanation which would represent them as obscure, or Moses unhappy in presenting them, ought not to be received when we have one that is plain, even if it should leave us without a law against marrying a wife's sister.

The prohibitions in Parker's table, and which agree with the belief of those on the other side, are thirty. Of these thirty Moses has expressed,

in the 18th of Leviticus, only fifteen,* and of these he repeats ten in the 20th chapter. Suppose Moses had the thirty in his mind, is it conceivable that all the cases mentioned in the 20th chapter should be the same that are mention in the eighteenth? This is the more incredible, that those in the twentieth chapter are evidently not copied from the other; the arrangement and the phraseology are both different. The following passage from Michaelis is worthy of attention: "In the latter of these passages we find only the same cases specified which had been specified in the former. Now, had they been meant merely of degrees of relationship, it would have been more rational to have varied them; and, if it had been said, for instance, on the first occasion, 'Thou shalt not marry thy father's sister,' to have introduced on the second the converse case, and said, 'Thou shalt not marry thy brother's daughter.' This, however, is not done by Moses, who, in his second enactment, just specifies the father's sister as before, and seems, therefore, to have intended that he should be understood as having in his view no other marriages than those which he expressly names; unless we choose to interpret his laws in a manner foreign to his own meaning and design." (*Mic.*, p. 119.)

Second. The number of the specifications in the first enactment forbids us to make any additions. They are far too numerous for examples. If Moses had said, "Thou shalt not approach to any more near of kin than a cousin, nor to any of thy wife's or husband's kindred nearer than of

* The Mosaic specifications amount to seventeen; but Parker has omitted two of them, and added fifteen of his own.

thy own," he would have included the whole thirty cases, and more in the degrees. But if he meant to give some examples, would he specify the full-sister, the sister by the father's side only, and the sister by the mother's side only; but leave us to make out specifications respecting the wife's sister and niece from those which respect the uncle's widow and the brothers? The conciseness of Moses' statutes cannot account for the want of more specifications, especially for the want of these which many think most necessary. Two short verses in the same style which he employs, would have served for the cases of the wife's sister and niece. If any lawgiver should make an enactment intended to comprehend thirty cases, if he did not specify the whole of them, it is very unlike that he would specify between twelve and twenty of them as examples.

Third. They are too minute for examples, and especially in those cases where, on the plan of parity of reason, minuteness was least necessary. Did Moses give his disciples all possible assistance, or rather work out for them all the easiest problems, and leave them to make out the difficult ones as they could? Having mentioned the half-sister by the father's side, he did not leave to inference the case of the half-sister by the mother's side, but specified that too. But both the half-sisters being specified, it would seem an easy inference that a man might not approach to his full-sister. Even that Moses does not leave to inference. The circumstance of a sister being born abroad or at home makes no difference in the nearness of kin, and yet the Lawgiver does not leave the prohibition in the one case to be in-

ferred from that in the other. The father's sister and the mother's are both specified, so that we are not left to infer the one specification from the other. The remarks of Michaelis on this subject (page 119) are pertinent: "Moses does not appear to have framed or given his marriage laws with any view to our deducing or acting upon conclusions which we might think fit to deduce from them; for if this was his view, he has made several repetitions that are really very useless. What reason had he, for example, after forbidding marriage with a father's sister, to forbid it also with a mother's, if this prohibition must be included in the first, and if he meant, without saying a word on the subject, to be understood as speaking not of particular marriages, but of degrees?" It is said by a writer on the other side, "that Moses, in the 6th verse, laid down the essential principle of the law against incest, which was nearness of kin. He then stated the degrees of kindred which were within the limitations of the law; and, in addition to this, he minutely specified several of the cases which were within the same degrees, by way of direction to us how to complete the list." A little farther onward the same writer says: "Things which are alike in themselves are alike virtuous or vicious; arguments, therefore, from analogy or similarity, are no less conclusive and satisfactory, by the common consent of mankind, than such as have their origin in express commands and prohibitions." Certainly this has not the common consent of men who have examined the principles of reasoning; and what the rest may consent to is nothing to the present purpose. We recollect hearing the

late Professor Milns, of Glasgow, whose acuteness and accuracy, as a thinker and an observer, have rarely been equalled, telling his class that analogical reasoning could give certainty in no case whatever. Bishop Whately, in his logic, affirms "that all good reasoning is reducible to proper syllogisms." Now, analogical reasoning is incapable of this. Let us try whether the argument on the other side is reducible to a syllogism. For example; "all who are equally near related with those whom we are forbidden to marry, we are also forbidden to marry; but the marriages now disputed are of equally near kindred with those that are expressly forbidden; therefore they are likewise forbidden. We do not admit the major proposition, that the prohibitions expressed include all cases of equal nearness of kin. It is just the point which requires to be proved, and where shall the proof of it be found? It is not more obvious in itself than the proposition, that every nation that is as wicked as the Canaanites ought to be destroyed by the people of the Lord. Moses, at the head of his list of prohibitions, has mentioned nearness of kin, which would include a number of them, but he has not said it would include the whole. If it did, all the married women in the world, all the men, and even the beasts, must be our kindred; for the are all included in this enactment, which fills the whole chapter: the marking off in paragraphs is only a modern invention. Moses has said nothing of degrees. He has not said that the prohibitions must be carried out in all directions to the same distance.

Even if Moses had not been inspired, if he had intended the thirty prohibitions, he would have

seen that people would be most likely to misunderstand him in respect of those who were more remotely related. If he had specified the brother's widow, and then the wife's sister, the uncle's widow, and then the wife's niece, and so through a few more of these remoter relations, it would have been very natural to conclude that, if a man was forbidden to marry his half-sister, he might not marry his full-sister or his daughter. From the common sentiments of mankind, it was far more to be expected that, if a few of the nearest connexions were not mentioned in the law, prohibitions in respect of them would be inferred, than that the same use of inference would be made in respect of relations who were more remote. In respect of very near relations, Moses is as minute as possible, specifying mother, step-mother, daughter, son's daughter, daughter's daughter, daughter-in-law, full-sister, half-sister paternal and maternal, wife's mother, wife's daughter, wife's son's daughter, and daughter's daughter. Here are thirteen cases among the nearest relations, and where the specification is as minute as possible. There remain only four of the cases expressed, namely, the aunts paternal and maternal, and the wives of the uncle and brother; and from these four the most of the unexpressed prohibitions are made out by parity of reason. From what the prohibitions in the cases of the wives of the paternal and maternal grandfathers, and of the grandsons by the son and daughter, are inferred, it is very difficult to discover; perhaps all the four from the case of the man's grand-daughters by consanguinity. It seems evident, without saying more on this matter now, that if the law was

intended to comprehend the thirty cases, Moses has specified the cases which are most obvious, and left to inference all the rest. We may be reminded that we cannot dictate how divine revelation ought to be given. That is readily granted; but when a man gives an exposition of divine laws which makes them appear inconsistent with reason, or less clear and definite than human legislators, with the same object in view, would have made them, we may question, without the least irreverence, whether the expositor has given the true explanation of them. Some tell us to remember that these are divine statutes. We have never forgotten that, but we know that their commentaries are human. We expect an inspired lawgiver to accomplish his object in a superior manner; but who will affirm that Moses has done so, if he intended to forbid the thirty marriages? Supposing that these prohibitions were all necessary, if Moses had said, "Thou shalt not take to wife any of the remainder of thy flesh nearer than the daughter of thine uncles, or thine aunts, or thy grandfather's wife, nor any of thy wife's nearer than of thine own," he would have included the thirty prohibitions, and more, without leaving one of them to be inferred. The rule in our Confession would be at once far more concise, definite, and comprehensive than the statutes of Moses on the subject, if he had the same end in view. But we vindicate the wisdom of his laws by maintaining that he expressed all the prohibitions he intended, and that no legislator could give them in a better form. We may expect some obscurity in prophecy and in the sublime doctrines of theology, but why should we expect it in laws under

which fallible men were to act in acquitting or condemning their fellow-citizens to branding, fine, slavery, or death? We cannot believe that the Jewish courts were to know the intention of Moses from tradition; but that he intended his law to include inferential prohibitions, they scarcely could learn from the law itself. And if, in the time of Moses and Joshua, the elders of the people had been taught to carry out the prohibitions to the degrees, it is incredible that the Pharisees, the authorized interpreters of the law, as such recommended by the Saviour, and including such men as Gamaliel, and Saul of Tarsus, should have held to the prohibitions rejecting the degrees. Though in respect of true piety they had lost the key of knowledge, it does not follow that they would err so much in a matter like this, nor that the great teacher from God would recommend their teaching to the people, if they had. The Karaits carried out their prohibitions so far beyond any in modern times, except the church of Rome, as ought to destroy their credit even with those on the other side of this question. As to Maimonedes, a learned Spanish Jew, living in the twelfth and thirteenth centuries, who states that the ancient Jews disapproved of the marriages in question, it is hard to perceive how his authority respecting the laws of Moses should be preferred to that of a learned German.

It will be proved, in the proper place, that, by the Mosaic law, a man was allowed to have a plurality of wives. His permission, interpreted by parity of reason, would have allowed the woman to have a plurality of husbands simultaneously; yet we know that if she had acted on that species

of reasoning, she would have been liable to be stoned to death as an adulteress. It is evident that, when Moses gave laws for the case of the man having a plurality of wives, he never intended them for the case of a woman having a plurality of husbands. It may, perhaps, be said that the constructive interpretation of his laws is to be used, except where it would lead to conclusions which would make them contradictory. But the instances where it would lead to that result are so numerous, that, without good evidence, we ought not to believe that his laws should be subjected to that principle of interpretation.

The constructive plan places the man and the woman in the centres of two circles; but the express and implied prohibitions place them on an inclined plane, the man one-third from the top and the woman one-third from the bottom. The prohibitions in his case reach twice as far downward among the younger generations, as backward among his seniors; and the prohibitions in her case, which are all by fair implication, reach upward among her seniors twice as far as they reach downward among her juniors. This consideration alone would seem fatal to some of the inferences drawn from the laws of Moses; such, for instance, as that from the uncle's widow to the wife's niece. People may laugh at the idea that it is worse for a man to marry one that is many years his senior, than one that is as many years his junior; but the fact, that the prohibitions from him as the *prepositus* reach upward just half as far as downward, and that in her case they are consequently reversed, is not easily got over. And yet the man is expressly forbidden to

approach to his uncle's wife, but not his nephew's. The woman, on the other hand, is implicitly forbidden the same intercourse with the husband's nephew, but not his uncle. This difference made between the male and female surely requires attention, if we would properly consider the statutes of the Lord.

It would seem that, by parity of reason, the men of Israel, being commanded to marry the widows of deceased husbands, would have been bound to marry their wives' sisters, if the former died without children; but as the case of the brother's widow is considered as an exception to general rules, it may be said that it cannot be explained constructively. A Jew was required to marry the widow of his brother if she had not children, but forbidden to marry her if she had, provided that marriage is the subject in the 18th of Leviticus. But it may be inquired which of these is the exception, or are they not both particular statutes belonging to no general rule. If near of kin includes relations by marriage, if marriage is the subject in that chapter, and the term wife there signifies widow, then the man is forbidden to marry his brother's widow, and that prohibition came under a general rule, but not otherwise. The reason of the requirement to marry the brother's childless widow may cast some light on the question how far it is an exception. It is evidently an exception in so far as he was not required to marry the widow who had children. If marriage to a brother's widow had been contrary to the moral law, we cannot admit that an exception requiring it could be made in any case whatever; and if it was only objectionable as being

highly inexpedient, we should expect the ground of the exception to be very important.

When the writer of this formerly published on the marriage question, he took the ground that the requirement grew out of the Jewish law of primogeniture, and was especially intended to make the descent of the Messiah traceable with certainty from those who had the promise that he should be of their offspring. That view of the matter must be abandoned for several reasons: one is, that the line of his descent from the time of Moses does not always run through the eldest sons, either in reality or according to the public registers; and the other, that the law gave no certainty that any man in particular, who had not heirs of his own body, should have children enrolled to perpetuate his name. He might have no brother or near kinsman; and if he had, they were allowed, under the pain of a few insults, to refuse to do the kinsman's part. There can be no doubt that some Jewish families became extinct in respect of male descendants, notwithstanding the law of the near kinsman. Whether the Messiah descended from any who were reckoned as the children of their uncles, we are not prepared to say. Boaz took Ruth, the Moabitess, the wife of Mahlon, to raise up the name of the dead upon his inheritance, that the name of the dead might not be cut off from among his brethren and from the gate of his place: yet Obed, the offspring of that marriage, is marked, in the genealogies both of the Old and New Testament, as the son of Boaz. The law requiring marriage to the brother's widow, called from a Latin word "the Levirate law," could have no connexion with the evidence that Christ's

descent was in the promised line. That law, according to Michaelis, "was not founded on any Jewish peculiarity; and was much more ancient than the time of Moses, having been in use in Palestine among the Canaanites, and the ancestors of the Israelites, at least more than two hundred and fifty years previous to the date of this law, and, indeed, with such rigour as left a person no possible means of evading it, however irksome and odious compliance with it might appear to him. That the Mosaic statute considerably mitigated its severity, will appear from comparing the story of Judah and his daughter-in-law, Tamar, with the provisions of this statute." The same author has traced the origin of this law to the Monguls, among whom polyandry prevailed, and a family of brothers would unite to purchase a wife, whom they should have in common; but where one brother could purchase for himself, and the other could not, if he died, the wife, with the rest of his property, would descend to his brother. Moses exempted the woman who had children from that law; and if she had none, and, therefore, could not marry out of the family, he made it obligatory on the brother-in-law, whose property she was, to take her for his wife. He thinks Moses did not much favour the Levirate law; "but," he remarks, "it is not advisable directly to attack an inveterate point of honour; because in such a case, for the most part, nothing is gained." He adds that, "among the Jews of those days, Levirate marriages have entirely ceased; so much so, that in the marriage contracts of the very poorest among them it is generally stipulated that the bridegroom's brothers abandon all right to the bride to which they could

lay claim by Deuteronomy twenty-fifth." Here, then, is a law founded on no peculiarity of the Jews, but arising from a very ancient custom of the eastern nations. But if marriage to a brother's widow had been either immoral or in the highest degree inexpedient, who can believe that the Divine Legislator would have taught his servant Moses to enjoin it in compliance with that custom? This is not like the laws regulating and restricting polygamy; for that practice had in its favour not only prevailing custom and patriarchal example, but likewise the luxurious manners and passions of the Asiatics, which, in the case of the other practice, can scarcely be supposed. It might be difficult to restrict a wealthy Asiatic from taking more than one wife; but the total repeal of the Levirate law, which would have left the brother-in-law to take the wife of the deceased or not, just as suited his own taste, could have met with but little resistance. The widows of elder brothers might have complained; but if Moses had been taught to see half the evil in marriage to sisters-in-law that some think they perceive now, the women would surely have been taught to be content without a second marriage, rather than be guilty of such a Canaanitish abomination. The marriage which the Levirate law would require by parity of reason, would be marriage to one's wife's sister, if the first had died without children. But it is said that we have no command to do so:" true, and that is precisely the point we wish to establish; that in statute law we are bound only by commands and prohibitions expressed or necessarily implied, and not by those deduced constructively.

It is asked whether all the commands of God are not positive statutes. Certainly they are, but not in the technical sense of the words as used in theology. This sense of them must be allowed, unless we reject the distinction between laws which are binding on all men as the creatures of God, and those which, though equally binding when revealed, are of no authority before their revelations. This subject may be more fully considered in another chapter. It is asked again, "And is the real mode of understanding the Scripture such, that no man is bound by anything that is not set down in terms?" And then the inquirer proceeds to remark, "that, if it be so, we have a method with the Bible which goes to extirpate Christian doctrine and morality." We know of none who say we are bound by nothing but what is set down in terms—of none who object to implication or necessary consequence; but of many who object to parity of reason in positive law. We do not object to parity of reason in interpreting moral precepts. "He," said the Saviour, "who smiteth thee on the one cheek, turn to him the other also." A man might obey the letter of this precept, and then beat the assailant to death; or he might retire without offering violence, and yet with a resentful spirit. But God requires the obedience of the heart, and it is not possible to obey that precept from the heart, without a disposition to pass over all other slight offences—a disposition that loves peace and hates contention. It is granted that God's positive laws require the obedience of the heart; but they do not necessarily require, like moral precepts, an aversion to what they forbid, but only to the disobedience which

would be in the act. If we obey God, we must not only abstain from lying, but likewise detest it: but when God required his people to keep a fast, he did not require them to loathe their food; and when he commanded them to leave their fields unploughed on the seventh year, he did not require them to hate the labour itself. A willing abstinence in such cases is all that is required. We grant that all that intercourse between the sexes which is, in the proper sense of the words, immoral, must be detested as well as shunned, or the divine prohibitions of it are not obeyed in the sight of God. But when men sit, by divine authority, to judge their fellow-men and punish them, they ought to decide according to the words of the law and their unavoidable implications. Again, it is not contended that, in a question respecting property or civil rights, the judges of Israel might not resort to parity of reason, and so decide, according to their best judgment, in favour of the rightful owner. It is in criminal law that we maintain they were bound to confine themselves to the prohibitions expressed, at least in all cases where God had given them particular specifications.

A constructive application of divine statutes will perpetrate as much iniquity as that of any other statutes. And must criminal laws be nugatory, if the constructive principle is rejected? are they not rather made more salutary—more conducive to public good? If *men* are competent to make prohibitory statutes which shall generally serve their purpose without construction, surely the Divine Legislator can do the same. It is in vain to tell us that the statutes of the Lord must be nugatory, unless fallible men may condemn

their neighbours by parity of reason. It is also in vain to tell us that the conciseness of the Mosaic statutes requires such an application of them to cases not expressed. We may be allowed here to repeat what was stated formerly, that the law in the Confession of Faith comprises more than double the number of prohibitions which Moses has expressed in the verses under consideration, and reaches them all without the aid of parity of reason. If Moses had had the same end in view, no doubt he could have accomplished it with as much certainty. The question, whether there is a parity of reason between the express prohibitions and the supposed ones, called inferential, may be better considered at the close of the next chapter.

CHAPTER VII.

Grounds of the Mosaic Prohibitions in respect of relations. Whether there is a parity between the Prohibitions which are expressed and those which are inferred.

Let us now consider the circumstances to which those Mosaic prohibitions which we are considering have respect. And, first, there are some things which require no prohibition, because they certainly will never occur. Accordingly, though we are forbidden to kill a man, and to remove our neighbour's landmark, we are not forbidden to kill an angel, or to extinguish the light of day; and,

for a reason about equally good, though a man is forbidden criminal intercourse with his mother daughter, and grand-daughter, he is not forbidden it with his grandmother, great grandmother, and great grand-daughter. Even the marriage of a man to his mother has been known among the ancient Persians, and their magi were the offspring of such horrid crimes. It seems a strange inference, that, because marriage to one's grandmother, which no one desires, would be wrong though it is not forbidden, therefore some marriages which are desired and are not forbidden by the words of the statutes, must, nevertheless, be unlawful.

2. These statutes have respect to consanguinity. They forbid sexual intercourse between the man and his mother, daughter, and grand-daughter, which is as far as the prohibitions were necessary in the direct line ascending and descending. In the collateral line the prohibitions extend to the aunts paternal and maternal. "An uncle, by the Jewish law, might marry his niece, though an aunt was forbidden her nephew; and the reason assigned by the Jewish writers is, that the aunt, being, in respect of the nephew, the same with the father or mother in the line of descent, has naturally a superiority over him; and, therefore, for him to make her his wife, and, therefore, bring her down to be in a degree below him, as all wives are in respect of their husbands, would be to disturb and invert the order of nature; but that there is no such thing done when the uncle marries his niece, for in that case both keep the same degree and order that they held before without mutation." (See Prideaux's Connexions.)

3. The Mosaic prohibitions before us respect

affinity. These are found in the verses from the 14th to the 18th, except that of the step-mother, which is set down among the cases of consanguinity. It has been said that the prohibitions on the ground of affinity are the most numerous. That is not granted, though the females related by affinity are just twice as numerous as those related by consanguinity. The man addressed in this passage is supposed to be married, and to have uncles, brothers, and sons, or at least one of each: now, let him have one married uncle, and an average number of married brothers and sons, and add to these the mother, daughter, and grand-daughters of his wife by former marriage or marriages, and those together will be twice as numerous as the females related to him by near consanguinity. The prohibitions by affinity reach to the wives of sons, brothers, and the paternal uncle, but no farther in those directions; and also to the mother, daughters, and grand-daughters of the wife, but not to her sister, niece, aunt, or any other corelative.

4. These statutes, if marriage is the subject, may respect the rights of the husband as ruler in his own family; and hence they forbid him to marry his aunt, but not his niece. But it is said no husbands are more under domestic control than old men who are married to young wives. That may be true in extreme cases, for old age is second childhood; but, taking the world as it usually is, there is reason to believe that a man would have more authority over his niece than over his aunt. Whether that was the reason of the fact or not, we must conclude that there was some reason why Moses specified the aunts paternal and maternal,

both in the 18th and 20th chapters, but the niece paternal or maternal in neither.

5. These statutes seem to have respected a very ancient Asiatic usage. To certain relations the Hebrew women might appear without a veil, but not to other men. Those to whom they might appear unveiled they must not marry, and to those whom they might marry, custom would not allow them to appear unveiled. The same usage prevailed among the ancient Arabs, and was converted by Mahomet into a written law. It is remarkable that the Mahomedan law respecting the veil does not agree with the Mahomedan law respecting marriage, but with the Jewish law. An Arabian female is restricted from marriage with any of those to whom she may appear unveiled, but the restriction extends to some before whom her veil must always be worn. But "the cases in which the veil is dispensed with precisely agree with the Mosaic prohibitions, when not extended by inference beyond the express letter of the laws. The only exception, if it deserves that name, is the case of the brother's widow. She might be seen unveiled by her brother-in-law, and yet, if she had no children, she might become his wife; when first seen by her brother-in-law, it could not be known whether she might become his wife, and, therefore, she need not use a veil. The usage just mentioned was before the giving of the law at least about four hundred years: accordingly, we find that Rebekah put a veil on her face when she learned that Isaac, her intended husband, was approaching. Mahomet allowed women to appear unveiled before slaves, beggars, and children without distinction; and it may be presumed that the

law of custom among the Jews and their ancestors granted a toleration in some respects similar.

Having made these remarks on the circumstances to which we consider Moses as having had respect in those statutes, the question is now more particularly before us, whether between the express and implied prohibitions there exists the parity of reason which is contended for. There are just three grounds on which this parity can be alleged. The first is, that affinity is nearness of kin in the sense of the statutes; that it is not so in the literal sense of the words "remainder of his flesh," is certain; but if Moses makes a particular use of it in his law, which can be shown from the law itself, that is just as proper as the use of the word 'manslaughter' in our law to signify the slaying of a woman. That Moses uses the words in that extended meaning, it may be very difficult or impossible to show. We think it has been shown that the circumstance of a number of prohibitory statutes in the books of Moses, all closely following a more general one, will not prove that they are all included in it. All that seems to be necessary is, that the rule at the head of a series of statutes should include a considerable part of them; and that there is an inconsistency in making the rule in the 6th verse to include only the statutes in the ten or eleven verses which follow it, and not those in the verses from 19th to 23d, because it is said the subject changes with the 18th or 19th verse. Yes, and it changes too at the 14th verse; the cases from the 7th to the 13th verse inclusive, are all cases of consanguinity, except that of the step-mother in the 8th verse; and yet the denunciations in the

24th and 25th verses are said to be against all the transgressions between them and the sixth verse. By what rule the denunciations in those last verses are made to bear upon all the sins specified from the 6th verse, and the rule in that verse to include only the specifications onward to the 17th or 18th verse, we cannot tell. The object, however, is evident enough; which is, to have those cases of affinity denominated near of kin, that some very important inferences may be drawn from them; and that so the forbidden marriages may cover a space of which the extremities on all sides shall be equi-distant from the centre. As the words "remainder of his flesh," in the 6th verse, cannot include all the subjects onward to the denunciations, why should we not understand it to reach only to the 13th verse inclusive? and then all the cases would be literally cases of consanguinity, except that of the step-mother, whom, though she was not near of kin, it was very natural to mention next to the man's own mother. The position, that the words in the sixth verse were employed to express affinities, is at least very doubtful.

2. The second ground of the inferences thought necessary is, that, when Moses forbade marriage with one female, he forbade it, by parity of reason, with any who was as nearly related. That is not self-evident, and we have hitherto been favoured with no proof of it. Moses gives no hint that his statutes were to be interpreted in that way; and the number and minuteness of his specifications, and the fact, that they are most minute where parity of reason, if admitted, would most easily supply deficiencies, affords satisfactory proof that

the Jewish courts were not to stretch them beyond what was expressed or necessarily implied.

3. The third ground which must be taken, if the specifications are to be carried out by parity of reason, is, that relationship is the *only* reason for the prohibitions. If other reasons are admitted, it is evident that two females may be equally near in respect of relationship, and, in respect of some other reason of the prohibitions, marriage to the one might be objectionable, and to the other not. Moses has not said that relationship is the only reason of his statutes, nor, indeed, that it is any reason of them at all; but that it is *one* of the reasons, we are not disposed to deny. He made it a rule, but for reasons it would seem which lie behind the rule itself. On this point it is hoped there will be no controversy, since those who are opposed to us fix on facility of intercourse as the reason of the statutes. Indeed, it is only by looking to the reason of a Mosaic statute that we can know whether it is moral or positive. The alleged natural horror at marriage to a near relation, the physical degeneracy of the children of such marriages, and various other reasons, have been assigned; but we believe the facility of intercourse, especially in early life, is the principal one. That facility, however, is not always in proportion to the nearness of the relation. Among the Jews a man might be on terms of the closest intimacy with his aunts that innocency would permit; but his nieces, after they grew up, would not be seen by him, unveiled. Far are we from pleading for marriages between uncles and nieces; we only say that they do not seem to have been forbidden by the laws of Moses. It is said that, in

respect of blood, a man was just as much related to his niece as to his aunt. That is not denied; but in respect of facility of intercourse, and, perhaps, on other grounds, there was a great difference. It may be said that the collateral line of consanguinity marked by prohibitory law, must stretch back as far from the niece as from the nephew. Well, we may have it so by construction, or parity of reason, throwing everything but consanguinity out of the account; but we cannot have it by fair implication. By that she was forbidden to be approached by her nephew, but not by her uncle.

Let us now consider those marriages which are understood to be consequentially forbidden on account of affinity. It will not be necessary to discuss the whole fifteen contained in Parker's table, the greater part of which must have been inserted in order to make the prohibitory ground a circle, or to gain positions from which he might make his artillery bear on places of more importance. The six consequential marriages, as they have been called, are all that require our attention; for it is certain that all who say they are forbidden, will agree with Parker's table throughout, and all who say they are not, will reject all additions to the list given by Moses. The first prohibitions by parity of reason which we shall notice, are those of the nieces by a brother and by a sister. There can be no impropriety in discussing this as one case. This prohibition is inferred from that relating to the aunts by the father and the mother's side. After what has been formerly said, very few remarks on this marriage can be necessary. "In respect of consanguinity, the niece is as nearly

related as the aunt; but among the orientals she was regarded as a more distant relation." The aunt, whether father or mother's sister, her nephew might see unveiled; in other words, he had much nearer access to her; whereas the niece, whether brother or sister's daughter, could not be seen by her uncle without a veil. Now, this distinction refers to the very essence of the prohibitions; for it is not the natural degree of relationship, but the right of familiar intercourse, that constitutes the danger of corruption. If, therefore, these laws were given for the purpose of preventing early debauchery, under the hope of marriage, marriage with an aunt and with a niece are by no means on the same footing; for to the latter, by the laws of relationship, an Israelite had a degree of access which, in the case of the former, was not permitted." (*Mic.*, p. 120.) If it be objected that the words in the sixth verse do not properly express the relationship according to the custom and feelings of the people, but as it was in reality, we answer, that the words, taken in their strict or literal sense, do not express relationship by affinity; and if Moses gave them a more extensive meaning in his statutes, why might he not use them to express degrees of relationship as it was understood by the people? Might he not legislate in respect of nearness of kin as it was understood and felt both by the Jews and the surrounding nations, and marked by the usage respecting the veil? Surely he would be most likely to fix a prohibition where, from previous facilities of intercourse, the expectancy of marriage would have the worst effects. But that danger was not in proportion to nearness of kin in the strictest sense of

the expression. There can be no objection to the use in law of a phrase in the sense in which the public understand it, which is quite a different thing from the use of figurative language.

The next constructive prohibition is that of marriage with a maternal uncle's widow. Moses makes mention only of the paternal uncle's widow, but it is said the other is just as near a relation. But here, in respect of the danger of previous intercourse, the difference was even greater than in the former case. "For if, by that ancient law, of which the Levirate marriage may be a relique, the widow was regarded as a part of the inheritance—'I, in the event of my father being dead, received his brother's widow by inheritance, but not my mother's brother's widow, because he belonged to a different family; nor yet could I thus receive the widow of my brother or sister's son, because inheritances do not usually ascend; or, at any rate, an inheritance of this kind; to make use of which, a man must necessarily not be old, if the person who has left it was young.' In the case, therefore, of the prohibited marriages specified by Moses, there was, by the ancient law, an expectancy, and by the Levirate law it became a duty, to marry the widow of a paternal uncle who had died childless, and to raise up seed to him; but in the case of the marriages not prohibited by Moses there could be no room for either." (*Mic.*, page 121.)

The next consequential marriage forbidden is that to the widow of a nephew. That, like the case of the maternal uncle's widow, is inferred from the case of the paternal uncle's widow. In this case, too, there were no such facilities of pre-

vious intercourse as to make the marriage improper, and the uncle was not permitted to see the widows of his nephews unveiled.

The marriage of the wife's sister is the last of what are called the six consequential marriages; and here the same argument against the prohibition holds as in the former cases. A woman had to wear a veil when in the presence of a sister's husband. But there is another argument against this prohibition, which, it would seem, should have set the controversy on the subject at rest, or rather should have prevented it from ever being agitated; which is, that Moses gives a direction respecting that marriage, which recognises it as formerly in use, and certainly does not forbid the continuance of the practice. To many the marriage seems to be Scriptural, not only from the absence of any statute against it, but from an implication that after the wife's death that marriage would be right. These matters will come under our notice in the next chapter.

CHAPTER VIII.

Remarks on Leviticus, 18: 18. *Marriage to a deceased Wife's Sister.*

THE words "Thou shalt not take a wife to her sister, to vex her in her life-time," have very properly held a prominent place in this controversy. Instead of the words now quoted, some give, as

the proper translation, the words "Thou shalt not take one wife to another, to vex her in her lifetime," (which is the marginal translation in our Bible,) "or to vex her as long as she lives." A writer on the marriage question in the Churchman of 28th October, 1837, remarks that the text and the margin have equal authority, which throws the burden of proof on the latter. In respect of the equality of authority he is surely mistaken, but in respect of the burden of proof his remark is certainly just and very important. Throughout the Scriptures generally, and especially in statutes, the presumption is in favour of literal translation. The opposite rules would open a wide door for all manner of enthusiasm. It is said that, "if polygamy is not forbidden in this verse, it is not forbidden in the Levitical law." We believe it is not forbidden in the Levitical law, nor expressly forbidden in the writings of Moses. The Princeton Review, after various remarks, which must soon be noticed, puts the question, "Who would presume to rest any doctrine on a translation at variance with the uniform sense of the words in all other passages of the Bible?" If it be admitted that all who approve of the literal translation consider it a good foundation for the doctrine which it contains, the reviewer's question is easily answered. First of all, the translators of our common version had both translations under consideration, and preferred the literal one. All the ancient versions, the Chaldee Paraphrast, the Targum of Onkelos, the Samaritan, the Syriac, the Arabic, and the Jewish Rabins, adhere to the literal construction. The seventy interpreters, who were all Jews, gave the literal translation when they translated the

Hebrew Bible into Greek, which had not the Hebrew idiom. Considering that they were all learned Jews, selected for that purpose, as being masters of the Hebrew and Greek languages, and that the quotations from the Old Testament by Christ and his apostles are generally in the words of the Septuagint, no human authority can be higher than theirs. Of commentators we claim for the common translation, Calvin, Poole, Fry, Hammond, Doddridge, Henry, Gill, Scott, Clarke, and Sir William Jones. To prevent such mistakes as some writers on the other side have fallen into, let it be stated that we do not claim Calvin, Henry, Gill, and Scott as auxiliaries on the general question of marriage to a wife's sister any farther than they support us by adhering to the literal translation in this verse. Before entering on the philological objections to the marginal translation, let us notice the objections made to the common one. Dr. Livingston says the 18th verse cannot relate to marriage with a sister-in-law, because that was forbidden before. It is understood he means it was forbidden in the 6th verse, "None of you shall approach to any that is near of kin," &c. If that logic is good, a number of the prohibitions between the 6th and 18th verse will require a new explanation, since none of them can relate to marriages among near kindred—those marriages being all forbidden in verse 6th. It is said that the words are in every other passage translated "one to another." But are we to admit that a phrase, by being often used figuratively, becomes unfit to be used at all in the literal sense? The words "Isha el achotha," (The original,) according to Buxtorph, occur nine

times in the Hebrew Bible. Six of those instances are in the writings of Moses, and all in Exod. 26: 3–17, except this one in Lev. 18: 18. Those five instances may be considered as but one, for they are all on the same subject and in the same passage. The three instances in Ezekiel are all one subject, which is the wings of the living creatures seen in his vision. As it would be unfair to hold Moses accountable for the words of Ezekiel, the whole wonder dwindles down to this, that Moses, having used the words "Isha el achotha" five times in one passage when giving directions to artisans who in the case could not misunderstand them, should afterward, at a distance of twenty chapters, use the same phrase literally when instituting criminal laws. Legislators are so fond of plain language when enacting statute laws, that we are not in the least astonished that the Jewish legislator, when so employed, should use words in their literal sense. But supposing that Moses intended to forbid a man to have at the same time two wives who were sisters, might he not be under the necessity of expressing it by the words "Isha el achotha," unless he had employed considerable circumlocution. In Campbell's Notes on the Gospels, when he rejects a proposed amendment on the translation of a particular text, he observes that the Greek text would not be a correct translation of the English which the critic proposes, and then gives the Greek that would. It might be well if all who propose alterations in the translation of the Bible, would translate into Hebrew or Greek the English to which they object, that the difference between it and the text in those languages

might be seen. For instance; if those who object to the translation in Lev. 18: 18, will translate it into Hebrew which will give the idea of "a wife to her sister" better than it is given in the words "Isha el achotha," they will gain a very important point in this argument. The Hebrew language must surely be capable of expressing the idea of a wife to her sister without much circumlocution; and if "Isha el achotha" does not express that idea, let us have the Hebrew words that will express it. It is difficult to believe that any phrase should become so idiomatic that it can no longer be properly used in the literal sense; and that the literal sense shall henceforth be inexpressible in that language.

The following quotation from the New England Puritan is well worthy of attention: "If marriage is intended in the foregoing prohibitions, as our opponents claim, and we deny, then the literal interpretation is made more necessary. In a passage, the design of which is to fix the degrees of relationship within which marriage might not be contracted, the general scope does not lead the mind to expect a law against polygamy. Where each preceding verse specifies some degree of consanguinity or affinity, within which men might not marry, the continuity of the subject naturally suggests that in the 18th verse some other degree of affinity shall be named. In this connexion the law against marrying the sister of a living wife seems in perfect concord with the foregoing. But the unity of the passage is broken and the subject abruptly changed, if the text above forbids an approach to those near of kin; and this is made

to relate to quite another subject; that is, to polygamy in general."

There are three objections to the marginal translations; one philological, one historical, and one legal. Let us attend, first, to the philological difficulty, and avail ourselves of the able and learned remarks of Professors Robinson and Bush. "The phrase 'a woman to her sister,'" says the former, "does, indeed, occur no less than eight times elsewhere in the Hebrew Bible in the general meaning 'one to another,' but only of inanimate objects in the feminine gender, viz., of the curtains, loops, and tenons of the tabernacle, Exod. 26: 3 bis. 5, 6, 17; and of the wings of the living creatures, Ezek. 1: 9, 23; 3: 13. The like phrase in the masculine, 'a man to his brother,' occurs in all about twenty times, mostly of men, but also in a few instances of inanimate objects and insects, as Exod. 25: 20; Joel 2: 8. But it is to be remarked that in every such instance this phrase, whether masculine or feminine, has a reciprocal distributive power; that is, a number of persons or things are said to do or to be so and so, one to another. A plural nominative invariably precedes, connected with a plural verb; and then the action or relation of this verb is by this phrase marked as reciprocal and mutual among the individuals comprised in the plural nominative. Thus: 'the children of Israel said one to another,' Exod. 16: 15, and often. So Abraham and Lot 'separated themselves one from the other,' Gen. 13: 11; Neh. 4: 19; Isa. 9: 19; in the Hebrew, 'they shall not spare one another,' Hagg. 2: 22; 'and the horses and their riders shall come down, each by the sword of the

other,' i. e., they shall destroy one another. So of the other examples. This, then, is the idiom; and to this idiom the passage in Lev. 18 : 18 has no relation. There is nothing distributive nor reciprocal implied in it. The phrase here refers only to the subject of the verb, upon which object no trace of mutual or reciprocal action passes over. To bring it in any degree under the idiom, it should at least read thus : ' wives (*na-shim*) one to another thou shalt not take ;' and even then it would be unlike any other instance. But farther, the suffixes attached in the singular to the subsequent words, (her nakedness, beside her, in her lifetime,) show decisively that even such a solution is inadmissible ; and those of themselves limit the words to two specific individuals (who have here no mutual action, the one upon the other) in the same literal sense as in the preceding verses, viz., a wife to her sister."

" It will be observed," says Professor Bush, " that in every other instance not only are the things which are to be added to each other inanimate objects of the feminine gender, but the subject of discourse is first mentioned, and by that is the import of the phrase governed. If we take the expression here according to its import in every other case in which it occurs, we shall be obliged to render the verse, ' Then thou shalt not take one to another to vex,' &c. One what ? it might properly be asked. If it be said one woman, this is immediately giving a new latitude to the phrase beyond what it idiomatically implies ; and yet its force as an idiom is all that is relied upon in proof of its referring not to a sister, but to any other woman." To account for the

change of expression in this verse from that in the former verses, Mr. Bush observes, that "the writer wished to introduce the terms for uncovering nakedness in a little different relation in the subsequent part of the verse, and so to connect them with other words as to form a strong dissuasive against the union forbidden. On reading the verse entire, we should certainly find it extremely difficult to hit upon any mode of expression so well calculated to convey the sense intended, as that which actually occurs, and this is what necessitated a departure from the fixed phraseology that runs through the other precepts, because we have here not the precept only, but an argument to enforce it—an argument drawn from the effects of such a marriage upon domestic happiness. The Lawgiver, in other verses, speaks, for the most part, in the language of simple, absolute authority; in this he hints at a reason for his command. We might expect, therefore, a slight change in the form of speech."

Having considered the philological, we come now to consider the legal, objections to the marginal translation; and, first, let us advert again to the general necessity of taking words in their literal sense in interpreting criminal law; not, however, to the rejection of unavoidable implication, which is equal to express law, nor the technical sense of a word, which, being well understood in the law, is, indeed, a literal sense. Thus, the slaying of a female through culpable disregard of life, is literal manslaughter in the vocabulary of criminal law. But the use of figurative language, or idiomatical expressions in criminal statutes, is quite another thing. These can scarcely be

admitted at all in such composition, and must be quite inadmissible where they might lead to any misunderstanding of the law. But if polygamy is the evil forbidden in Lev. 18: 18, Moses has always been misunderstood by the great body of the Jews and their teachers; and if Moses did not foresee that himself, he was inspired by one who did. But polygamy prevailed to such an extent in the time of Moses, that, if he had meant to forbid it entirely, he, no doubt, would have spoken out plainly. None misunderstood him when he forbade the worship of the golden calf, or the intercourse of the Israelites with the women of Midian.

Some of our opponents would represent us as maintaining that polygamy was lawful because Moses legislates on it, and because he could not lawfully legislate on that which could not lawfully exist; if that is the way they are to state our arguments, we had better do it ourselves. Our statement is this: Moses recognises polygamy and legislates on it, but that legislation never goes farther than to regulate and restrict; it amounts in no instance to a prohibition. Several passages in which Moses legislates for the case of a man having two wives, and which we think relate to polygamy, are supposed by our opponents to relate to the case of a man having two in succession. We think that is not the idea which they suggest to persons who read them without any view to controversy. But we need not stop to dispute about them, for we find the positive permission of polygamy in the Mosaic law. The law of Exod. 21: 9, 10, expressly permits the father, who had given his son a slave for a wife, to give him afterward

another woman, and legislates for the treatment of the first wife after the marriage with the second. Let us not be understood as saying that polygamy was right, but only that in the law of Moses it was not forbidden, but expressly permitted. It has been affirmed that, in relation to the king, it was prohibited expressly, because he was forbidden to multiply wives and horses; and those who will not admit the conclusion, have been represented as maintaining that he might lawfully have as many of the former as the latter. Now, they have only affirmed that, if the prohibition of polygamy was to be found in the word *multiply*, he was forbidden to keep two horses; and that, if he might have two of them, the prohibition of polygamy must be found in something else than that precept. It was a restriction, we grant, but to what extent is uncertain. The doctrine of the Talmud and of the Rabbins was, that he ought not to have more than four. Mahomet, who generally follows the ancient Arabian usages, in the fourth chapter of the Koran, fixes four as the number to be allowed to one man, and commands that it be not exceeded; and, before the time of Moses, there would seem to have likewise been an ancient usage of the patriarchal families, which limited polygamy to the same number, and which may also have continued among the Jews and Arabs. That was the number of Jacob's; and we find Laban requiring him to take an oath that he would not take more. But we do not care for the authority of Mahomet nor the Jewish doctors on that subject. The command not to multiply was, no doubt, an indefinite restriction; and Solomon, who certainly and outrageously transgressed it, is on that account

denounced in the Bible; but David, though also a polygamist, is not, Anything farther that might be said on the legal objections to the marginal translation, may be as properly stated in the next argument.

The historical objection to the marginal translation of this verse is equally strong. Bigamy and polygamy were practised both before and after Moses, among the people of God. From the number of first-born males given, Numb. 3: 43, Michaelis calculates that there was only one among forty-two children, which shows that polygamy greatly prevailed. "Gideon had three score and ten sons of his own body begotten, for he had many wives." (Jud. 8: 30.) "And he" (Jair) "had thirty sons." (Jud. 10: 4.) "And he" (Ibzan) "had thirty sons and thirty daughters." (Jud. 12: 9.) "And he" (Abdon) "had forty sons." (Jud. 12: 14.) These men were judges in Israel, or chief magistrates, for a number of years, but for or against their character nothing farther is recorded. Elkanah, the father of Samuel, had two wives. And we read that "Joash" (the King of Judah) "did that which was right in the sight of the Lord all the days of Jehoiada; and Jehoiada took for him two wives." David we know had eight wives. Of Solomon, whose conduct in that respect is marked with the disapprobation of God, we make no farther account than that it shows the feelings of the Jews to have been very different on the subject of polygamy from ours; otherwise, instead of being admired by all, he would have been detested, notwithstanding his great wealth and power. The same conclusion may be drawn from the fact, that so many who were guilty of that

transgression, rose to be chief magistrates in the nation—an office which was not hereditary, and which, therefore, implied popularity with a large number of the people. The words "Joash did that which was right in the sight of the Lord all the days of Jehoiada," like every other ascription of rectitude to a human being, must be understood with limitations. But would such commendatory language be used concerning him if he had spent his life in the violation of an express law of Moses? Or would Jehoiada be represented so favourably if he had led the young king into such a transgression? Or would David be recorded as the man after God's own heart if he had regularly lived, from the time he ascended the throne, in the open violation of a clearly revealed law?

We, who deny that the Mosaic law positively forbade polygamy, consider that the sin of holy men of old in respect of it was greatly palliated by their comparative ignorance; but our opponents cannot properly take that ground. If their translation of Lev. 18: 18 is just, the Old Testament church had as clear a revelation against the odious practice as Christians have now. Was Jehoiada ignorant of that precept? Was David ignorant of it, who had such frequent intercourse with prophets, priests, and other holy men, and who made the law of the Lord his study day and night, and endeavoured to keep all his Commandments? It will not be pleaded that the best judges, kings, and priests in Israel were ignorant of the Hebrew idiom, and so, like some of us, misunderstood the meaning of the precept. Even the prophets do not seem to have spoken out against polygamy, where good men were living in it from year to

year, even to the end of their lives. But in less than one year after David fell into the sin of adultery, the faithful Nathan was sent to reprove him. And after David repented of that sin, and obtained forgiveness, there is not one hint that he ever repented of having taken a plurality of wives, or thought of putting any of them away, or was reproved for living with them, or lost divine favour at any time on that account. If David, that great master of Hebrew composition, did not understand the Mosaic prohibitions, we may despair of it; but if he did understand the disputed verse as our opponents do, he spent all the years of his reign in wilful sin.

It is said "We give the ancient church far too much credit for attention to the law of God as contained in the Pentateuch, if we suppose that all its prescriptions were rigidly observed." We do not suppose any such thing; but there is a vast difference between admitting that some parts of the law were not rigidly observed by the ancient church, and admitting that some of the most pious that ever lived in it not only fell into sin, but spent all the remainder of their days in it, and then died rejoicing in God's salvation, without leaving, for future generations, any declaration of repentance of their wilful and long-continued transgression. The piety of the old dispensation, as well as that of the new, implied obedience to the will of God, at least so far as it was known, or at least it excluded the idea of disobedience to clearly revealed precepts through life. If this is granted, as surely it will, we must either conclude that David and other saints had no piety at all, or that they did not understand our disputed verse as those do who adopt the marginal translation.

Since Omicron (Professor Robinson) appeared in the New York Observer, the marginal translation of that verse seems to have been going out of favour; but it seemed to have such an influence in the General Assembly, that it has been thought necessary to present the arguments against it rather fully. If some wish to inquire into the subject farther, they may consult Bush's Notes on Leviticus, and others who have been quoted in these pages.

The inquiry now arises, whether the rejection of the marginal translation settles in the affirmative the question whether a Jew might lawfully marry his deceased wife's sister? We think it does not settle it by any unavoidable implication contained in the words of the common translation, for the special prohibition of a thing in the extreme does not imply the sanction of it in a smaller degree; but, taking the common translation, together with the context, we have no doubt that it proves the affirmative, if marriage is the subject in that chapter. In the 17th verse Moses specifies the relatives of the wife, viz., the daughter and grand-daughter. "It certainly would have been exceedingly natural for him to proceed, in verse 18, to speak of the wife's sister, with whom the probability of a marriage could not but be tenfold greater. So strong, indeed, is here the fitness of the obvious sense, both in respect of the words and the connexion, that leading modern commentators on the original text (Grotius, Michaelis, Rosenmuller, &c.) do not hesitate to adopt it even on these grounds. If this view be admitted, this verse, as all agree, settles the question. It does not prohibit, but merely regulates, the marriage of

a wife's sister; forbidding only that it should take place during the life-time of the former. It precludes the occurrence of cases like that of Jaocb with Leah and Rachel."—(*Omicron.*) The writer now quoted does not say, as he has been reported to do, that the words of the common translation settle the question, but that the fitness of the obvious sense, both in respect to the words and the connexion, settle it; a conclusion which seems to be unavoidable.

That the legislator would leave to inference that a man might not approach to the daughter or grand-daughter of his wife, but should specify both of them—and yet, when he came to the one with whom a marriage was far more likely to be desired, should abstain from specifying, and leave his intended prohibition to be inferred from the 6th verse—it seems impossible to believe. But when the case of wife's sister is actually brought up, and marriage with her forbidden during the life-time of the former, how is it possible to doubt for a moment that it would have been expressly forbidden continually, if it had been wrong? It surely would have been far safer to leave the case of the wife's grand-daughter to inference than that of her sister, if inferential prohibitions were to be allowed at all. We may be told, again, to "recollect that these are divine statutes," but we do not expect the less fitness and propriety in them on that account. We would far less expect of an inspired legislator than of other lawgivers, that he would be most minute where it was least necessary, and *vice versa.*

Chief Justice Vaughan, when he gave his de-

cision, as it seems, according to his own judgment, said: "A man was forbidden to marry his wife's sister during the life-time of the first; afterward he might." But some time after, when he gave judgment in a similar case, and was under the influence of the bishops and the court, he gave the same view of the disputed verse that our opponents give now, viz., that the words "in her life-time" are connected, not with the word "*take*," but the words "*to vex*," and may be paraphrased thus: "Thou shalt not take a wife to her sister, for that will vex the first married one all the days of her life." If the words may bear either of the interpretations, it would seem the context ought to decide between them. But in respect of the present question, it seems to matter but little which of the views we take, for both of them agree in this, that the 18th verse contains no prohibition to marry two sisters, the one after the death of the other. On an implication in favour of such a practice, as contained in that verse alone, we have not insisted. But when we look at the previous verses, and see that Moses had before him the subject of sexual intercourse among relations, and in the 17th verse of that with the relations of one's wife, it becomes incredible to us that, if he intended to forbid one to marry two sisters in any case, he should have stopped short, and only mentioned the marriage of the second during the life of the first. Entire silence respecting marriage to a wife's sister would seem sufficient proof that Moses allowed it; but the notice he has taken of that marriage in a passage where he descends so much to particulars, and the omission of any prohibition of it after the death of the for-

mer, seem amply sufficient to show that it is not against the Mosaic law.

We are told that the expression "in her lifetime" is too slight to be allowed to vacate the force of all the considerations which have been adduced in proof of the implied prohibitions contained in the preceding verses. We trust it has been shown that the only implied prohibitions there, are the prohibitions of females from the sins there forbidden expressly to the males. What some opponents call implication is nothing else than what the law authorities on this subject, with more propriety, have called *parity of reason*, or construction; a thing which ought not to be introduced into criminal statutes. "If the inference," says one of our learned opponents—"if the inference which we have shown to be deducible from verse 16, be intrinsically sound, it cannot be set aside by any inference in the verse before us; for there is nothing there more certain than we have found elsewhere. The inference deduced from the 16th verse, which forbids a man to approach to the wife of his brother, namely, that he may not marry his deceased wife's sister, depends on the certainty of a number of other positions; as, 1st. That marriage is the subject in the 18th Leviticus. 2. That the term 'wife' in that passage signifies widow. 3. That the express prohibitions are to be interpreted by parity of reason. 4. That there is parity of reason in the express prohibition to approach the brother's wife, and the constructive prohibition to marry the deceased wife's sister." This last position implies that, notwithstanding the practice of polygamy, private divorce, and concubinage among the Jews, the

prohibitions must extend as far among the relations of the deceased wife, or wives, as among the relations of the deceased husband. That nearness of kin is the ground of all the prohibitions, and, therefore, we have only to fix on the one most distant from the man, and carry out the line to the same distance in every direction, so that the circumference line may be a perfect circle; and then we must find the most distant male relation of the deceased husband whom the wife is, by implication, forbidden to marry, and, by parity of reason, forbid the man to marry any female that is as nearly related to his deceased wife. Unless all these positions are certain, the 16th verse will teach us nothing respecting the wife's sister. The doubtfulness of any one of them would make the conclusion uncertain, and the failure of any one of them would make it a *non sequitor*. It appears to us that none of them are secure, and that some of them are certainly without foundation. Those subjects have been discussed in the former pages; and it is only necessary to remark now, that, if Moses wished to be understood as he is by our opponents, he might have saved himself many words, and rendered his meaning quite certain and obvious to every one. It seems evident to us that the inference from the 16th verse amounts to nothing; and that the inference from the 18th verse stands secure, and with nothing in the law of Moses opposed to it. The ancient Jews, with the exception of a very small sect, never drew the inference against marrying a wife's sister. Moses was inspired by Him who knew what marriages would be most desired, and who surely did not forbid expressly

those of which there was least danger, and leave the prohibition of those that would be most desired, to be discovered by a doubtful and tedious process of reasoning.

We shall finish this chapter with a few remarks on marriage to a wife's niece. This case is not so nearly allied to the former one as some may suppose—there being just the same difference between sister and niece as between aunt and cousin. It would be just as fair, from the prohibition to marry an aunt, to infer a prohibition to marry an aunt's daughter, as from a prohibition to marry a wife's sister to infer one to marry her niece. From what express prohibition is this inferential one deduced? Not from a prohibition to marry one's own niece, for that one itself is but inferential. But the man is expressly forbidden to approach his paternal uncle's widow, which, by fair implication, forbids the woman to admit the approaches of her husband's brother's son; and then it is understood that, by parity of reason, the man must not marry his wife's sister's daughter nor brother's daughter. The express prohibitions to the man are not carried out so far among his wife's female relations as his own, for they include no collaterals; but the implied prohibitions to the wife extend just as far among her husband's male relations as his own. From this point we are expected to leap back, and draw out the prohibition lines the proper distance among her collateral female relations. If our arguments were satisfactory in the former case, they must suffice for this, and need not be repeated.

CHAPTER IX.

Classification of the Jewish Laws. Whether their Marriage Laws are binding on us; and, if so, whether wholly or only in part.

Preparatory to the inquiry, whether we are bound by the laws in Lev. 18: 6–18, it is necessary to consider the classification of the Jewish laws. In the Confession of Faith, and, perhaps, in most of our systems of theology, they are divided into three classes, viz., ceremonial, judicial, and moral. Dr. Livingston gave (p. 61) a division a little different, and which has been followed by Professor Hodge; viz.: "1st. The duties of man to God. 2d. Those which regard men's permanent relations to one another; and, 3d, Those which relate to the peculiar circumstances of the Jews." The first threefold division seems to be the best, and it comes recommended by the standards of our church. It was made to expound the Scriptures, and give comprehensive theological knowledge. The other seems to have been made to settle a particular question, and shove by the arguments used on one side of it. Had those who give this classification been making out a system of moral duties without a special reference to what is called the vexed question, perhaps the classification in the Confession of Faith would have sufficed. Be that as it may, it is necessary

to examine whether their classification is well founded, and whether it effectually turns off the arguments of those who think the rules in the 18th of Leviticus were for the Jews alone. To simplify the inquiry, let it be observed, that there is no dispute respecting the ceremonial law, for all allow that it is not now in force; neither is there any respecting the duties of man to God, and which we call moral. The question between us is, whether the judical law of the Jews is obligatory, and, if so, to what extent. This law includes at least part of what Doctors Livingston and Hodge characterize as laws which regard men's permanent relations to one another, and what they describe as relating to the peculiar circumstances of the Jews. That part of the judicial law which related to Jewish peculiarities, they allow to be now without authority; but that which relates to men's permanent relations one to another, they regard as still in force. It is understood that there are in the Mosaic code a number of laws which do not appear to be typical or ceremonial, and which are now void of authority; such, for instance, as those relating to witchcraft, linsey-woolsey garments, and sowing diverse seeds. There is also a division made of divine laws into moral and positive. It is certain that all God's Commandments are positive, and that they are all moral, inasmuch as disobedience to any of them is immoral: and yet, when we use the words in a more restricted sense, which we may call the technical language of theology, and so distinguish between God's moral and positive laws, we do not make a distinction without a difference. By moral precepts we understand those which

enjoin, by divine revelation, the duties which would be obligatory without it. The Gentiles have that law written in their hearts, and their sins are the transgression of it. By the positive precepts we understand those precepts which enjoin duties which are not duties before they are revealed. The precepts of the ceremonial law, for example, could not be binding on any person without a revelation; neither could baptism or the Lord's supper. But love to God and man, with honesty and truth, are duties over the earth, even where there is no Bible nor preacher to enforce them; though, after they are revealed, the transgression of them is more sinful.

Dr. Livingston tells us of moral positive laws, of laws universally binding, yet undiscoverable, except by revelations, (not written, perhaps, on the hearts of the Gentiles,) "of moral duties which do not proceed from God's holiness." Another author on that same side tells us that "God has a right to give what moral laws he pleases;" this, in a sense, is true, for what he pleases is always right: but the connexion shows the writer's meaning to be, that God has a right to command any sinful act, and so change it from a sin into a duty by the command. That seems to have been the opinion of some of the most prominent in the General Assembly, in opposition to Mr. McQueen. These discoveries call loudly for a revision of the old theological vocabulary. The Repertory for July, 1842, says: "There are things which are inherently and essentially wrong, and can in no possible case be right; as hatred of God and malevolence toward men. The prohibition of such things arises out of the very nature of God,

and is as immutable as that nature: but there are other things which are wrong only in virtue of a divine prohibition; and that prohibition may be founded either on temporary considerations or on such as are permanent; but in either case, whenever the prohibition is removed or the opposite commanded, the guilt of the action ceases." According to these statements, (to which we subscribe in part,) no marriages but those between parents and children can belong to the class of things which are inherently and essentially wrong; for, if so, they never would have been lawful even in the family of Adam. They are wrong in the view of that authority only in virtue of a divine prohibition founded on permanent considerations. It seems, therefore, that in his judgment these permanent considerations alone would not make them sinful; for he goes on to say that, whenever the prohibition is removed or the opposite commanded, the guilt of the action ceases.* The examples given by the reviewer, as of the removal of prohibitions founded on permanent considerations, do not seem to be satisfactory. They are things which were never imbodied in any prohibition, and, therefore, cannot be exceptions or instances of the removal of one. The command to the Israelites to take the property of the Egyptians, is

* If these permanent considerations of which the reviewer speaks, would not make an action sinful without a divine prohibition, what could make theft, perjury, and licentiousness to be sinful among the heathen? If the withdrawal of a prohibition would make falsehood, and borrowing without a design to pay, to be guiltless among the Jews, would not those same things be innocent among the Gentiles, who never had such a prohibition?

given as a temporary and particular removal of the general prohibition to steal. A little sober criticism, to show whether we have got the proper translation and meaning of that passage, might have been expected from the writer, before he quoted it for such a purpose. Must the great principles of morality be sacrificed to carry a point about which the best of men have differed for many hundreds of years? We readily grant that God might take the property of the Egyptians by the hands of the Israelites, as well as the lives of the Canaanites. But it is impossible for God to lie, and it cannot be possible that he would teach his creatures to lie one to another; yet to borrow without intending to pay, is both falsehood and dishonesty. As Henry remarks: "God is to be regarded in that matter as compelling those that have done wrong to make restitution, for he sits in the throne judging right." Clarke has the following note on the text: "Borrow, rather request. The Hebrew has not here the meaning of taking by rapine or violence. It is used, 1 Sam. 30: 22, to signify the recovery of property taken away by violence; so we should understand it here. The Israelites recovered a part of their property, their wages of which they had been most unjustly deprived by the Egyptians." Scott's comment is to the same purpose: "The Great Proprietor of all things, who giveth to all as he pleases, seeing the Egyptians enriched by oppressing the Israelites, thus constrained them to refund and to pay them the wages which their labour justly deserved. The word 'borrow' suggests the idea of fraud in the transaction, which the original word does not imply." "Our translation," says Dick, in

his System of Theology, "is unhappy; the original word signifies simply to ask. God directed the Israelites to ask jewels of gold and silver, and at the same time he disposed the Egyptians to grant their request; thus he spoiled the oppressors of his people, and recompensed the latter for their hard services, which they had so long performed." Scragg, in his Theological Questions, has the following remarks on this passage: "It certainly should be rendered 'they asked or required of them jewels of silver, &c.' And at the thirty-sixth verse, instead of 'they lent unto them,' it may be rendered 'they let them have.' The Egyptians were affraid of them, and, therefore, readily complied with whatever they desired. The Israelites had long been defrauded by the Egyptians of their lawful wages, and this was but a just way of repaying themselves." Dr. Dick says: "The command to the Israelites to destroy the seven nations of Canaan cannot be regarded as a suspension or abrogation of the sixth Commandment. This was not a violation of the sixth precept, which, indeed, forbids one man to imbrue his hands in the blood of another, but reserves to God the right to dispose of his creatures; and, in taking away life, he may employ some of themselves, as the civil magistrate does not himself execute the law, but delegates another." "We have no example of the suspension or abrogation of a moral precept, unless we should view, as an instance of suspension, the permission to work on the Sabbath in cases of necessity and mercy, which, however, is not a deviation from the original design of the law, because the Sabbath was made for man; that is, for man's good, not man for

the Sabbath." The offering of Isaac on the altar and the slaughter of the Canaanites were not contrary to the sixth Commandment properly interpreted. The alleged exceptions from the obligations of certain moral precepts are no exceptions at all, but are such things as the precepts, rightly understood, did not forbid. The command to put a murderer to death, according to law, is not an exception to the sixth Commandment, for it is not killing in the sense of the word "kill" in that precept. It is killing, and so is the slaying of a serpent or a fly, but it is not such killing as is forbidden in the moral law.

"A distinguished writer suggests that God commanded Hosea (1 : 2) to marry a harlot, contrary to the law. But a little more attention to the text would have shown that he understood literally what was intended parabolically. Turretin says the sense of the passage is, 'Take to yourself a harlot, for the sake of argument, for reproof; that is, propose to the people of Israel that idea, and apply to them the simile of such a wife, in order to set before them the sin of spiritual adultery—that is, idolatry;' and thus he proves in that the text says, 'Take to yourself a harlot and children of a harlot,' while the children of the harlot could not be taken at the same time with the mother. So that it is a sufficient answer to this suggestion to say, that God did not command the prophet to commit such a sin." (*N. E. Puritan.*)

If we consider what is really intended by moral precepts, we will not find that God ever abrogated or suspended one of them, and we may be assured he never will. If all killing by divine

authority is a suspension of the sixth command, it was suspended from the time of Abel's sacrifice till the time of the Christian dispensation, for all those four thousand years animals were slain by divine authority. It will be said the sin forbidden must be understood only of the killing of men, though they are not named in the Commandment —a just restriction ; but surely we may proceed a little farther, and restrict it to the killing of men unlawfully, and, so interpreted, we never find it suspended.

The reader may inquire what our opponents expect to gain in this controversy by proving that moral laws may be suspended by divine authority. We take their design to be this : The law forbidding a man to approach to any that is near of kin, they consider as a moral law, and maintain that the necessity for such marriages in the family of Adam and the injunction under the Jewish law were temporary suspensions of that law—suspensions which do not disprove the fact that it was moral. We, on the other hand, believe that those particular marriages by divine authority prove that they were not *malum in se*, or immoral in the strict sense of the word ; though, in the more extended sense of it, all disobedience to God is immoral. Thus, it was immoral in a Jew to sow his fields on the seventh year.

Let it be recollected that what we call positive duties as distinguished from moral, are duties which have become so by the positive commands of God but were not obligatory before. And let it now be added, that the fact of those being enjoined on one people does not make them binding on another. But no one will say that we are bound

by the whole judicial law of the Jews. Even those who deny the distinction in words between moral and positive duties, admit it, in fact; otherwise they would have to maintain that it is sinful to eat swines' flesh or to reap the corners of one's field, and that the penalties of the Mosaic law should be enforced. The rule given on the other side for discovering which of the Mosaic precepts are of permanent obligation, is, to inquire which of them are founded on permanent relations. It seems to be incumbent on them to show that all the divine precepts which they regard as obsolete were founded on temporary considerations. The penalties, for example, must be shown to be founded on temporary relations, or they must be inflicted still: or if some of them shall be found to rest on temporary and some on permanent considerations, those that rest on the latter should still be retained. It would seem that there are some of the penalties which have as much connexion with permanent considerations as the precepts to which they are annexed, and which are said to be still in force. And yet every Christian government legalize such Mosaic penalties as they please, without acknowledging the divine obligation of any, and without being reproved by the church for that omission. According to the rule laid down on the other side, if any Mosaic penalty was founded on permanent considerations, it ought to be retained as divine law for Christian nations. If Christians were to insist on having the laws of Moses in respect of marriage, property, or penalties introduced, as of divine authority, it may be inquired whether Jesus Christ could, with propriety, deny the charge of opposition to

Cæsar, by saying, "My kingdom is not of this world?" But his declaration cannot be construed into a direction to his followers to spare idolatry where they might find it legalized.

Besides the penalties, there were some Jewish laws which appear to have had no ceremonial character; which do not seem to have had any fitness for the Jews more than for other people; and which are, nevertheless, considered obsolete. We may give, as an instance, again, the laws relating to shaving the corners of the beard, leaving the corners of the field and the gleanings for the poor. If these were typical, so, for ought we know, were all the laws of the Jews which were not in the strict sense moral.

The fact of moral precepts being found in a law, does not prove it to be a law to us; otherwise, as has been said, "we should be under the laws of Confuscius." It has been said, in answer to this, that we may disobey the laws of Confuscius, but not the laws of God. Well, we do not recognise the authority of Confuscius, but we recognise the authority of moral precepts in whatsoever law they are found, though we do not always admit the authority of the law in which they have a place. Certainly we believe that the law of Moses was the law of God; but that does not show how much of that law God intended for the Jews alone, and how much for all nations. If it can be proved that the laws in Lev. 18: 6–18 were given for all people, let us obey them. But a part of them may have been given on account of some Jewish or Asiatic peculiarities which to us are unknown. We consider it certain that positive statutes must be obligatory on them to whom they are given,

and on them only. Our opponents say that some exceptions were founded on Jewish peculiarities, or at least one exception. Query ; might not some prohibitions be on the same foundation ?

It is easy to see that the rule which requires us to ascertain what laws are founded on permanent relations or on temporary, must be of difficult and uncertain application. It is not possible for us to trace, with minuteness and accuracy, the similarity and dissimilarity of our circumstances to those of a people living half-way to the other side of the globe, three thousand years ago, under different customs, a different government, and, which is still more important, a different dispensation of religion. If the reason of the law should be found to lay in any of those circumstances in which they differed from us, according to the rule which has been mentioned, that law is not binding on us. But it may lay in some of those circumstances without our discovering it, and, owing to this failure, we may consider ourselves as living under a law which God never intended for us. If some will maintain, in respect of any particular judicial law of the Jews, that the reason of it still exists, it is their part to prove what they assert ; not ours to prove the contrary. No man should be required to prove a negative.

If the precept in the words " Thou shalt not uncover the nakedness of thy brother's wife " is a prohibition to marry his widow, and founded on a permanent relation, is not the command to marry her, in another passage, founded on the same relation ?

In the difficulty of deciding on the permanency of the judicial statutes of Israel from the reason of

them, it will be well to distrust our own judgment in that matter, and allow ourselves to be guided by Christ and his apostles. We shall find them fully recognising the moral law; and, joining what they forbid or enjoin with their plain recognition of rules from the Old Testament, which they would have observed under the new dispensation, we may find a complete system of duty. It is true that we shall not find much direction there in regard to marriage, excepting that we should marry in the Lord: but the civil magistrates in Christian nations seem to regulate that matter well enough; and if any of us disobey them, the church, as well as the state, has a right to call us to account. If the apostles had interfered with the marriage usages and regulations in Greece, Rome, and other nations where they formed Christian churches, it certainly would have raised such opposition that we would have some account of it. In all that is said in the New Testament on the subject of marriage, and on that of impurity, we find no hint at an incest marriage law. When Paul had before him the case of the man who took, or proposed to take, his father's wife, he made no reference to the Levitical law.

Some tell us that the marriage law was not for the Jews only, but for all nations, and that the restrictions relating to marriage must be permanent as the law itself. That is, if we understand it, that the regulations given in Leviticus must be as permanent as the law given in Paradise two thousand five hundred years before, that "a man shall leave father and mother and cleave to his wife, and they twain shall be one flesh." They will not apply their rule to the law respecting the

brother's childless widow, and say that must be permanent as the law of marriage. Surely it is not evident that all the regulations which, in course of time, come to be attached to a permanent institution must also be permanent; and yet it has been affirmed without proof, as if it were an axiom. The Sabbath is a permanent institution, and yet the act restricting it to the seventh day of the week, though given along with the institution, was temporary. The statutes in the 18th Leviticus were given about two thousand five hundred years after the law of marriage; and yet they are spoken of new as if there could be no law of marriage without them. But must they not be permanent until the Lord himself repeal them? No, if he gave them as regulations for a dispensation which was to pass away. Many of the laws of Moses, being formed for the Jewish commonwealth, have expired by their own limitations, so that to repeal them was unnecessary. If the prohibitions under consideration were founded on permanent relations, it is rather strange that there were some of them undiscovered from Adam to Moses, though all that time there were men of piety on the earth; and still more strange that many of the pious, under the light of Christianity, cannot perceive that they should be obligatory now. Some of the prohibitions were founded on moral fitness; but if all the express ones had been founded on it, the same would not hold true of those which men have deduced from them by parity of reason.

In the Christian Intelligencer of February 11th, a distinguished minister of the Dutch Reformed Church affirms that "the General Assembly were

not bound to settle the question on principles of Jewish interpretation, but upon those inculcated by the Gracious Master himself." Well, they were not bound to take the Jewish doctors as infallible interpreters, and yet the testimony of the Jewish authorized teachers, from Moses downward, ought not to be despised in a case where we never find them opposed by their prophets nor by the Great Teacher. But where shall we find, from the Author of our religion, any interpretation of what is called the incest law? On marriage, adultery, fornication, and divorce he has given us his authorative declarations, but not on incestuous marriages, excepting that the law he quotes from Genesis forbids a man to marry his mother; for it requires him to leave her and cleave to his wife.

It seems to be too hastily admitted that Christ changed the law of Moses. It is true that he gave an infinitely better explanation of some parts of it than the Jewish teachers; and that the Christian dispensation, when fully introduced, superseded the Mosaic. But while Christ was on earth as a teacher, he maintained the authority of Moses fully, observing his law in every point, and so fulfilling all righteousness. He lived under the Jewish dispensation, and the authority of all the laws of Moses certainly continued with that dispensation. If he predicted a change, and prepared the church for it, he did not make one. Some have thought that Christ abolished capital punishment for adultery, forgetting that, in the case of it brought to him, he gave no judgment. He would not be ensnared by his crafty enemies into a usurpation of the place of the civil magis-

trate. He acted then on the same principle as when he said, "Man, who made me a judge or a divider over you?" We have, then, a civil and and criminal case brought before him, in both of which he declines to act; and adheres to the principle, that his "Kingdom is not of this world." In respect of divorce, he explained the design of Moses, but made no change in his law. The subject before him was private divorce, which required no evidence nor legal proceedings, but merely the writing out of a bill, which the husband might write out himself without accounting for it to any one—such divorce as his supposed father, Joseph, intended, instead of bringing his betrothed to a public trial and an ignominious death. When Paul charged Christians not to go to law, he did not change the laws nor encroach on the civil rights of any person. When Jesus said, "He that will take away thy cloak, forbid him not to take thy coat also," and "He that smiteth thee on the one cheek, turn to him the other," he did not change the law respecting property or personal injury, but only taught that we ought not to resort to it for trifles. There is no more evidence that Christ changed the law of the Jews than that Paul changed the law of other nations. If Nicodemus and Joseph of Arimathea, after they became disciples, had heard these precepts of the Saviour, no doubt they would have approved of them highly, and would have counselled others to act upon them. But if, when they got to the seat of judgment, such cases had come before them, they certainly would have enforced the law of restitution and stroke for stroke. If a judge in the present time should dissuade his neighbour

from going to court for redress of a slight grievance—and yet if his advice should not be taken, and the case should come before him as a judge, and he should grant the redress which the law prescribes—there would be no inconsistency in his conduct. Neither ought his advice to be construed as disapprobation of the law. It would be a great defect in any law if it did not provide for the redress of slight grievances, so that the unruly may know that they act unlawfully, and may have their dispositions mollified by the forbearance of the injured. If the law did not put the former, in some measure, in the power of the latter, the forbearance of the injured could gain them no credit, since they could not have redress. If Christ had repealed the Mosaic law so far as relates to slight injuries, the change would have been for the worse; but even his disapprobation of the law as a law for his time, ought not to be inferred from his counsel to his disciples, to show their forbearance by not resorting to it in such cases. Christ disapproved of divorce, except for unfaithfulness to the marriage engagement, as probably Moses had done; but it does not follow that Christ disapproved of the Jewish law of divorce, or regarded it as unsuitable to the Jews of his time.

All the cases brought to show that Christ changed the law of Moses, came quite too soon for alterations, for Christ had not offered the great sacrifice and risen from the dead. Christianity was not established and the divine authority of the Mosaic dispensation was unimpaired. If the General Assembly could not deal with a case of incest just as the Sanhedrim ought to have done, we cannot see what remained for them but to

proceed, as Paul did at Corinth, on the general principles of morality. But we grant that those principles would not have reached the case of Mr. McQueen.

It has been considered that Christ repealed the law of Moses in respect of polygamy. If so, let the passage be pointed out. That practice is certainly one of the great abominations of the earth. It prevailed to an awful extent in the east, in the time of Moses. He put it under restrictions, which gradually wore it out among the Jews. It has been drawn as a probable inference from the writings of Solomon, that he was almost the only polygamist of his day in Israel; and it is understood that it did not exist among the Jews after the Babylonish captivity, which may account for the silence of Christ on that matter: but one thing is certain; we do not find that ever he said a word on the subject. It may be said that the original law of marriage which he quotes (not from Leviticus, but from Genesis) was against polygamy. That is granted; but the Old Testament saints had that law as well as the new. It has been considered that, as the Saviour spoke against divorce, he of necessity spoke against polygamy; but the connexion between those evils is not so close as has been thought. It does not appear that ever Solomon divorced any of his wives; and Henry VIII., who put away so many, was never a polygamist. That any Christian church would fall into polygamy, is not to be supposed; but men who had involved themselves in it, were not beyond the reach of converting grace; and it would seem that, when converted, they joined the church without putting away any of their wives. The

apostle's direction, that a bishop must be the husband of one wife, is most easily explained, by the admission that polygamists were then in the church; and that the practice was so bad that, however pious they might have become, they must not be raised to office. Christian churches ought not, like the Jewish church, to have permissive laws for the hardness of the heart; and, therefore, polygamy should not be tolerated any farther than that, in a country where it is legalized, a penitent who has a plurality of wives, may enter the church without putting any of them away.

The argument from the fact, that in the Old Testament generally, and always in the new, directions are given to the husband and his wife, not to the husband and his wives, seems to amount to nothing. It is very common in the Scriptures to use the singular number distributively. The fourth Commandment says: "On it (the Sabbath) thou shalt not do any work, thou, nor thy son, nor thy daughter, nor thy man servant, nor thy maid servant, nor thine ox, nor thine ass." The argument from the use of the singular number would go to prove that a man ought not to have more than one son, &c.

We have enlarged the more on these matters because it appears that the understanding that Christ improved the law of Moses, has vitiated some parts of the argument on both sides of the marriage question.

Our belief is, that Christ and his apostles, by quotations from some parts of the Old Testament, and by recognition of others, and by new revelations, have left a complete system of duty. And that the judicial law of the Jews is obsolete as a

law, however valuable it is in other respects. If we have now no particular law of incest, the civil governments in Christian nations will generally manage that matter well enough; and when the church must interfere, she has the general principles of morality to guide her, as Paul had when a case of incestuous adultery was brought under his notice.

CHAPTER X.

Alleged inexpediency of marriage to a sister-in-law or a wife's niece. Facilities of intercourse. The word incest—effects of it. Discipline on grounds of inexpediency. Certainty necessary before suspending or excommunicating members of the church. Summing up of the argument.

If it were certain that the injunction, not to approach to any that is near of kin, forbade marriage to a sister-in-law, the question of expediency need not be raised, for disobedience to God can never be expedient. We have observed that philology would not extend the meaning of the words "near of kin" beyond blood relations; and that if Moses meant to use them in another sense, he might use them in the sense commonly understood in those times. He might use them to express those whom the Jews considered as near of kin, and whom, therefore, they must not see unveiled. And the usage of the veil agreed exactly with the prohibi-

tions expressed. We are encouraged to go into the question of expediency, not only by the conviction that, if the marriage in question is exceptionable, it must be on this ground alone, but likewise by the fact, that our opponents have gone into the consideration of the grounds of the prohibitions, and have generally considered it to be facilities of intercourse. We have no doubt that they are right in that particular, at least as to the principal ground of them. And hence the question whether the disputed marriages are inexpedient on account of those facilities.*

It may seem unnecessary to say that we are not to attempt to cut off all opportunities to sin, nor all temptation to it. For instance; we are not to stop the preaching of the Gospel, lest some should commit the sin of hearing it with ridicule. It is equally clear that we may be too negligent in that matter, especially with the young. There are extremes on both sides, and both of them injurious. It might be thought that the knowledge of every Popish confessor, that he cannot marry one of the fair ones, would tend to keep the confessional pure; and also that the discouragement of marriage as inferior to single life, which got into the Christian church before the earliest denunciation of marriage to a sister-in-law, would tend to keep the thoughts of the unmarried more pure; but in both cases the result was unfavourable. In Asia it is thought necessary to have females a great deal more secluded and restricted than in Europe and in America; and yet we regard the

* The argument from facility of intercourse, as Jeremy Taylor informs us in his *Ductor Dubitantium*, was formerly used against the marriage of cousins.

Asiatics, both males and females, as less pure than Europeans or Americans. Even in France and Spain unmarried females are, or at least were lately, under far more restrictions than those of this country and Great Britain; yet no one believes that these countries are more pure. These things are mentioned because there are some who think we cannot go too far in cutting off opportunities for committing sin; and that the more restrictions, the better. There are states of society when error on the side of restriction is more popular than on the side of laxity; and so, when the Saviour was on earth, the Pharisees, with all their ascetic rules, were more in public favour than the Sadducees. The same principle has been repeatedly exemplified in Christian lands, and, perhaps, may be in this country.

There is a freedom of intercourse between the sexes which, being within due bounds, conduces to mutual respect and superior purity. The reader, then, ought not to think that our opponents must be more friendly to the virtue of the sexes than we, merely because they inculcate a few more restrictions. But we shall be told it is not the facilities of intercourse between the sexes that is objected to, but that facility without the restraint contained in the full understanding that they never can marry. In the case of brothers and sisters that understanding is of great use; in that of parents and children it may be of some, though there we hope it is very seldom necessary. But as criminal intercourse between parent and child, where it does occur, is the worst possible, it is not wonderful that Moses gave it a place in his list of prohibitions. The great danger in those cases,

without a counteracting sentiment, would be the commencement of intercourse in very early life. This does not hold in the case of the sister-in-law and the wife's niece. In all these cases at least one of the parties is grown up and married, and so is under the eye and the care of another. The intercourse is generally more easy and confidential than between those who are not related; but the feeling of affection for a wife and of friendship for a brother we think a sufficient counterpoise against the greater opportunities of intercourse. We believe all men of virtue or decency feel it so, and on the rest an incest law would be no restraint, unless enacted by the state and enforced with penalties. It is said to be mere affectation to allege that no man, capable of being influenced by an ancest law, would harbour in his breast, while his wife is alive, the desire of marriage to her sister. If it be affectation, we cannot help it. The desire might possibly enter the mind of an orderly person, but he would not cherish and mature it into overt transgression. It is not probable that the most dangerous licentious desires have any connexion with the desire of marriage. To the man who regards divine authority expressed in the seventh Commandment, our Savour's sermon on the mount, and the other denunciations on the sacred pages, of adultery and every approach to it, an incest law is surely unnecessary in respect of the crimes apprehended; and to the man who regards them not, it will be useless. Where a wife's sister is unsafe, we would advise every other lady of suitable age and appearance to avoid passing a few days in the house. To the hired women it might be more dangerous

than to any others. The desire of marriage with them probably would not arise, but the absence of that would be no security against other desires. Those last do not seem to have any connexion with admiration of education and accomplishments. A licentious nobleman will be more apt to assail the virtue of good-looking poor girls in his neighbourhood, than of the most accomplished ladies of his own rank. All the cases we have ever known or heard of, in which men corrupted their sisters-in-law—and happily they are very few—have been cases where there was not the slightest pretensions to religion, nor any appearance of respect for it. There are some parts of the country where the aversion to marriage with a sister-in-law is not strong among religious people ; but it does not appear that sisters-in-law are in any more danger there, than where the aversion to that marriage is greatest. It is said that "few men are such wretches at first, but desire steals insensibly." Perhaps so ; but a married man, who has any respect for divine authority, will check that desire ; and the man who has it not, will never be restrained by Parker's table, the article in the Confession, nor any interpretation given of the 18th Leviticus. We have known a few cases of marriage to the sister or niece of a deceased wife, and been informed of more, but have never learned that in any of those cases there was the slightest suspicion of any impropriety during the life of the first wife. If our opponents knew of any such cases among people who are understood to have had any respect for religion before the wicked intercourse commenced, it is remarkable that they never say so. Of the superior fitness and expe-

dience of those marriages affirmed by some, we need not say much, as our design is not to recommend them, but to advise Christians to leave their brother in such cases to follow the dictates of his own judgment and conscience. One thing, however, strikes us forcibly, which is, that, though a man may be deceived with any one as a step-mother for his children, he is less likely to be deceived with his sister-in-law than with a stranger. He is likely to have a pretty good knowledge of her character and disposition.

It is said that the relations which a man forms by marriage are permanent. And so they are, where his wife lives ; but they are so far dissolved by her death, that he may be married to another : and if they are not any farther dissolved, we must learn the fact from divine revelation, for reason or considerations of expediency will not discover it. Whether revelation shows it, has been already considered.

The name of *incest* has been given to those marriages, which goes very far to prevent a candid investigation. Our opponents have gained much by classing under one name cases, a part of which are great abominations, which all condemn ; and applying what the Bible contains against these, to all other cases which they are pleased to call by that hateful name. This is just such argument as if we should class tobacco among the the poisons, (which some do,) and then quote, against the use of it, all that we read in medical books of the effects of arsenic or prussic acid. If we believe them, we shall understand that the heathen, to whom revelation was not given, were cast out of their land for the same conduct in

which the holiest men of their time lived and died, without leaving us any account of their repentance, or of divine disapprobation manifested against them on account of it. On the same principle our opponents wish to drop the name sister-in-law, and use instead of it the name "sister by affinity." We have no other objection to the change than that it is useless. No man who considers the subject, will be influenced by it. Some prefer the name *sister*, and tell us that the husband calls the wife's sister by that name. Yes, and if he called her mother or daughter, it would not make their marriage better or worse in the judgment of any sensible man. The morality of acts does not depend on names. It does not appear that the parties in the marriages objected to, stand any worse in the estimation of the Christian public than other people. Though the sentiments even of the Christian public are not a rule of discipline, the discipline which does not agree with them will fail of the intended effect. And yet it ought to be administered, if we are sure that God requires it, but not where we are in doubt. Indeed we do not believe that any penalties should be inflicted without certainty on that point, though counsel and admonition may.

It was the opinion of some in the Assembly that no evidence of repentance on the part of Mr. McQueen could be accepted by the church until he should separate from his wife. It is pretty certain that the apostles had some men in their churches who had a plurality of wives, whom they had married while they were heathen, and from whom they were not required to separate after they became Christians. Whether if a

member of the Christian church had married two wives, and been excommunicated on that account, he would have been required to put away the second married, in proof of his repentance, we cannot tell. But after the ancient church came to exercise discipline for marriage to a sister-in-law, they did not always require separation. Whether they were consistent in that, we do not say ; but the contrary cannot easily be proved, for some things are done wrong, the undoing of which would be only an additional evil. If Mr. McQueen has committed sins, as all the rest of us have, it is believed there is no danger that he will add to their number by putting away his wife.

Suspension from church membership, or from the Christian ministry, is severe discipline, and should be employed only in cases of certain and great offence, or where the accused allows judgment to go by default. Let it not be said that, if discipline is too severe, the responsibility rests on them who subject themselves to it. Every court is morally responsible for their sentence. They are not responsible for all the evils which are incidental to it; as, for instance, if, a man being sent to the states prison, his wife or mother should die of a broken heart; but they are morally accountable for his confinement and hard labour, and all that their sentence contemplated. If the sentence was just, they can bear that responsibility ; which, however, is a different thing from casting it off. These remarks are submitted because some speak as if, when a man does an act disapproved by the church, all the responsibility of his sentence, however severe, rests on himself.

Absolute certainty is necessary before we turn people out of the church or the Christian ministry; and this certainly must respect both the fact alleged and the criminality of the fact. In the criminal law of the land this distinction is unnecessary, because crime is sufficiently defined; but in ecclesiastical courts the fact may be certain and the criminality doubtful. If it were certain that the marriages considered were very inexpedient, that alone would be no warrant for casting any one out of the church on account of them. It is not for doing things that are inexpedient that erring mortals should excommunicate a member of the church. We ought, before taking that step, to be certain that his conduct has been contrary to the law of God.

It may be expedient now to give a very short summary of the argument contained in these pages, but omitting many points which necessarily came to be discussed. It is as follows:

Any person accused in the Presbyterian church, is entitled to demand a trial by the Word of God; and this implies that, whatever the language of any human composition may be, he is not to be condemned by the judicatory until they are fully certain that he is condemned by the Holy Scriptures. In respect of the standards of the Presbyterian church, the provisions of the act by which they were adopted plainly show that a difference of opinion respecting some parts, and even avowed disapprobation of some articles, might be permitted. For, without that toleration, there never could be an alteration made in them as the adopting act provides, viz., by the votes of two-thirds of the Presbyteries. It was not intended, if we may

judge from that act and from the book of discipline, that every deviation from the standards in doctrine, practice, or form must be charged as an offence. The fathers who drew up the constitution have wisely left it to those who should follow them, to judge, in respect of any deviation from the standards, whether to take it up as an offence or not, and what penalty to inflict, if one should be necessary.

Our practice corresponds with this view: There are several articles of belief in the standards on which we are allowed to have different opinions—several rules and forms which are not enforced. It is expected that every one who signs the Confession of Faith is, in doctrine, a Calvanist, and, in church government, a Presbyterian. But on points which do not impinge on the general system of doctrine or the essentials of Presbyterianism, freedom seems always to be allowed, except in relation to marriage among Christians who were previously related by affinity. The inexpediency of one's act is not sufficient ground for charges, nor anything that is merely doubtful. The doubtfulness of an act is a sufficient reason why we should abstain from it ourselves, but it is likewise a reason why we should never condemn another on account of it. The strong ought to accommodate the weak in some things, but are not bound to it in all: and if in any case we should enforce the accommodation by discipline, we should thereby destroy its savour as a free-will offering of Christian love. If a brother's conduct tends to lead others into sin, he ought to be warned and exhorted; but we can have no right to subject him to penalties until he transgress against

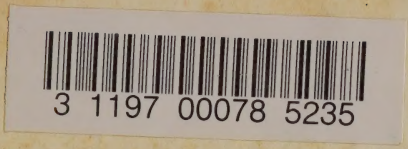
the Word of God. The offences for which we exclude a member from the church must be certain and eminently culpable, otherwise our discipline will have no sanction from apostolic rule or example.

The marriages which have occupied the attention of the churches are not to be regarded as certainly unlawful; for, however clear this guilt or innocence may appear to a few, to a great number in the world and in the church they are doubtful. This the history of opinions and of ecclesiastical procedure must have shown.

There are at least five things which ought to be very clear to our mind before we bring any fellow Christian under ecclesiastical penalties for these marriages; as, 1. That marriage is the subject, or at least included in the subject, in Lev. 18: 6–17. 2. That the term wife in that passage means widow. 3. That the prohibitions there are to be explained by parity of reason. 4. That, so explained, they include the marriages considered; and, 5. That they continue to be authoritative laws for the Christian world.

The author has now to submit these pages to the candid reader, hoping that, by assisting some future inquirers, he may pay, in some measure, the debt he owes to those who have gone over part of the same course before him. If at any time he has spoken with unbecoming freeness of those on the other side of the question, he hopes it will be ascribed to a desire to make his argument plain, and not to any disrespect, which he is sure he did not feel.

THE END.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